IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL, Plaintiff/Respondent, vs. GERALD ARMSTRONG, Defendant/Appellant.	)	NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 32

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	)	No. 157680

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

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CHRONOLOGICAL INDEX NO. 157680 VOL. 32 MARIN NO. 157680	PAGE NO.
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT (EXHIBIT C, ET SEQ.) 10/26/95	8852
ARMSTRONG'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE 11/2/95	8928
ARMSTRONG'S AMENDED NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TOTHE TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE (INCLUDING EXHIBIT E) 11/16/95	9046

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA

LAW & MOTION, CIVIL CALENDAR

RULINGS

PAGE: 4-A

TIME: 9:00 **DATE:** 1/27/95 **DEPT:** 1

JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** J. BENASSINI

CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

THE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES IS GRANTED AS TO THE FOURTH AND SIXTH CAUSES OF ACTION AND DENIED AS TO THE ELEVENTH CAUSE OF ACTION.

AS TO ALL CAUSES OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE AS TO WHETHER THE LIQUIDATED DAMAGES PROVISION IS INVALID. DEFENDANT RELIES ON THE LAW AS IT EXISTED PRIOR TO JULY 1, 1978. (SEE *UNITED SAV. & LOAN ASSN.* V. *REEDER DEV. CORP.* (1976) 57 CAL.APP.3D 282 AND EARLIER VERSIONS OF CIV. CODE, §§ 1670 AND 1671.) THE LAW NOW PRESUMES THAT LIQUIDATED DAMAGES PROVISIONS ARE "VALID UNLESS THE PARTY SEEKING TO INVALIDATE THE PROVISION ESTABLISHES THAT THE PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE CONTRACT WAS MADE." (CIV. CODE, § 1671, SUBD. (b).) DEFENDANT'S EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT REGARD. ALTHOUGH DEFENDANT STATES IN HIS DECLARATION THAT HE WAS NOT INVOLVED IN NEGOTIATING THE PROVISION (SEE D'S EX. 1, ¶12), HE GOES ON TO STATE THAT HE DISCUSSED THE PROVISION WITH TWO ATTORNEYS BEFORE SIGNING THE AGREEMENT. (*ID.*, ¶¶12-13.) THUS, HE CLEARLY KNEW OF THE PROVISION YET CHOSE TO SIGN IT. HE HAS NOT SHOWN THAT HE HAD UNEQUAL BARGAINING POWER OR THAT HE MADE ANY EFFORTS TO BARGAIN OR NEGOTIATE WITH RESPECT TO THE PROVISION. (SEE *H. S. PERLIN CO.* V. *MORSE SIGNAL DEVICES* (1989) 209 CAL.APP.3D 1289.) DEFENDANT NEXT STATES THAT PLAINTIFF'S ACTUAL DAMAGES ARE ZERO. (D'S EX. 1, ¶12.) HOWEVER, "THE AMOUNT OF DAMAGES ACTUALLY SUFFERED HAS NO BEARING ON THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISION..." (SEE LAW REVISION COMMISSION COMMENT TO § 1671.) FINALLY, DEFENDANT POINTS TO THE FACT THAT OTHER SETTLEMENT AGREEMENTS CONTAIN A $10,000 LIQUIDATED DAMAGES PROVISION. (SEE D'S EXS. 2C AND 2D.) THIS ALONE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT DEFENDANT HAS NOT SHOWN THAT CIRCUMSTANCES DID NOT CHANGE BETWEEN 12/86 AND 4/87 AND THAT THOSE SETTLING PARTIES STAND IN THE SAME OR SIMILAR POSITION TO DEFENDANT (I.E., THAT THEY WERE AS HIGH UP IN THE ORGANIZATION AND COULD CAUSE AS MUCH DAMAGE BY SPEAKING OUT AGAINST PLAINTIFF OR THAT THEY HAVE/HAD ACCESS TO AS MUCH INFORMATION AS DEFENDANT).

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIV. CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00 **DATE:** 1/27/95 **DEPT:** 1

JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** J. BENASSINI

CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ALSO HAS NOT RAISED A TRIABLE ISSUE REGARDING DURESS. DEFENDANT'S OWN DECLARATION SHOWS HE DID NOT EXECUTE THE AGREEMENT UNDER DURESS IN THAT IT SHOWS THAT HE CAREFULLY WEIGHED HIS OPTIONS. (SEE D'S EX. 1, ¶10.) IT CERTAINLY DOES NOT SHOW THAT HE DID SOMETHING AGAINST HIS WILL OR HAD "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE *IN RE MARRIAGE OF BALTINS* (1989) 212 CAL.APP.3D 66, 84.) IN ADDITION, DEFENDANT IS RELYING ON THE CONDUCT OF A THIRD PARTY (FLYNN) TO ESTABLISH DURESS, YET HE SETS FORTH NO FACT OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT PLAINTIFF HAD REASON TO KNOW OF THE DURESS. (SEE *LEEPER* V. *BELTRAMI* (1959) 53 CAL.2D 195, 206.)

AS TO THE FOURTH CAUSE OF ACTION, CONTRARY TO DEFENDANT'S ARGUMENT, THE SUBJECT DECLARATION DOES MORE THAN MERELY AUTHENTICATE DOCUMENTS. (SEE P'S EX. 1(A)(11), ¶¶1-3.) THE COURT FINDS THAT THE DECLARATION CONSTITUTES A DISCLOSURE OF DEFENDANT'S "EXPERIENCES WITH" PLAINTIFF OR "KNOWLEDGE OR INFORMATION" CONCERNING PLAINTIFF AND HUBBARD. (SEE P'S EX. 1B, ¶7D.) DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING OBSTRUCTION OF JUSTICE/ SUPPRESSION OF EVIDENCE. THE SETTLEMENT AGREEMENT EXPRESSLY DOES NOT PROHIBIT DEFENDANT FROM DISCLOSING INFORMATION PURSUANT TO SUBPOENA OR OTHER LEGAL PROCESS. (SEE P'S EX. 1B, ¶7H; CONTRAST WITH PEN. CODE, §§ 136.1 AND 138, *WILLIAMSON* V. *SUPERIOR COURT* (1978) 21 CAL.3D 829, *PEOPLE* V. *PIC'L* (1982) 31 CAL.3D 731.) NOR IS PLAINTIFF IN THIS CAUSE OF ACTION SEEKING TO PROHIBIT DISCLOSURE TO GOVERNMENT AGENCIES CONDUCTING INVESTIGATIONS PURSUANT TO STATUTORY OBLIGATIONS. (CONTRAST WITH *MARY R.* V. *B. & R. CORP.* (1983) 149 CAL.APP.3D 308 AND *ALLEN* V. *JORDANOS' INC.* (1975) 52 CAL.APP.3D 160.) EVEN IF A PORTION OF THE AGREEMENT COULD BE CONSTRUED TO SO PROHIBIT (SEE, E.G., ¶10), PLAINTIFF IS NOT RELYING ON THAT SECTION. NOR HAS DEFENDANT SHOWN THAT THE PROVISION IS SO SUBSTANTIAL AS TO RENDER THE ENTIRE CONTRACT ILLEGAL. (CONTRAST WITH *ALLEN*, *SUPRA*, 52 CAL.APP.3D AT 166.

SUPERIOR COURT, MARI COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00 DATE: 1/27/95 DEPT: 1
JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: J. BENASSINI
CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

AS TO THE SIXTH CAUSE OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING THE CNN INTERVIEW. DEFENDANT ADMITTED IN HIS DEPOSITION THAT HIS CONVERSATION WITH CNN INVOLVED KNOWLEDGE HE HAD GAINED BECAUSE OF HIS YEARS OF EXPERIENCE WITH THE ORGANIZATION (P'S EX. 1A AT 344:1-4), THUS REFUTING HIS ARGUMENTS THAT HIS STATEMENT WAS BASED ON KNOWLEDGE ACQUIRED AFTER THE SETTLEMENT AGREEMENT AND THAT HIS INTERVIEW WAS DIRECTLY RELATED TO THE INSTANT LITIGATION. IN ADDITION, PLAINTIFF SET FORTH NO FACTS OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT HE COULD DISCLOSE INFORMATION ACQUIRED AFTER EXECUTION OF THE SETTLEMENT AGREEMENT OR THAT HE COULD MAKE SUCH STATEMENTS IN THE CONTEXT OF FUTURE LITIGATION. FINALLY, THERE IS NOTHING IN THE STATEMENT WHICH TIES IT TO EITHER OF THE ARGUMENTS RAISED BY DEFENDANT. DEFENDANT ALSO FAILS TO RAISE A TRIABLE ISSUE REGARDING THE AMERICAN LAWYER INTERVIEW. DEFENDANT'S CLAIM THAT HE ONLY DISCUSSED THE INSTANT LITIGATION IS REFUTED BY HIS OWN ADMISSION THAT HE DISCUSSED "THE PLIGHT OF THE ORGANIZATION [AND] WHAT IT WOULD TAKE TO END ITS LEGAL TROUBLES." (D'S EX. 1D AT 352:15-19.) DEFENDANT'S CLAIM THAT HIS DISCUSSION INVOLVED "NOTHING MORE THAN WHAT JUDGE BRECKENRIDGE STATED IN HIS DECISION IN ARMSTRONG I" IS REFUTED BY HIS ADMISSION THAT HE DID NOT RECALL DISCUSSING THE BRECKENRIDGE OPINION WITH THE REPORTER. (D'S EX. 1D AT 358:20-23.) FURTHER, DEFENDANT POINTS TO NOTHING IN JUDGE BRECKENRIDGE'S OPINION WHICH COINCIDES TO THOSE MATTERS DISCUSSED BY DEFENDANT.

AS TO THE ELEVENTH CAUSE OF ACTION, PLAINTIFF HAS NOT SHOWN THAT DEFENDANT VIOLATED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. THE DECLARATION RELIED ON BY PLAINTIFF (P'S EX. 1(A)(8)) DOES NOT DISCLOSE DEFENDANTS "EXPERIENCES WITH THE CHURCH OF SCIENTOLOGY [OR] ANY KNOWLEDGE OR INFORMATION HE MAY HAVE CONCERNING THE CHURCH OF SCIENTOLOGY..."

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00 **DATE:** 1/27/95 **DEPT:** 1

JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** J. BENASSINI

CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ARMSTRONG FILED A SUPPLEMENTAL DECLARATION AND EVIDENCE SIX DAYS LATE. THE COURT DID NOT PERMIT SAME. THE PLAINTIFF'S MOTION TO STRIKE THE SUPPLEMENTAL PAPERS FROM THE FILE IS GRANTED. PLAINTIFF'S REQUEST FOR SANCTIONS IS GRANTED. DEFENDANTS KNEW THE LATENESS OF THE FILING, SOME SIX DAYS. THERE WAS AMPLE TIME TO SEEK THE COURT'S PERMISSION FOR A LATE FILING. PERMISSION WAS NOT SOUGHT. SANCTIONS REQUESTED BY PLAINTIFF PURSUANT TO SECTION 437C(i) ARE GRANTED IN THE AMOUNT OF $700, AS THE COURT FINDS THIS SIX-DAYS LATE FILING TO BE IN BAD FAITH.

8856

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

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CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 157680 [PROPOSED] ORDER OF SUMMARY JUDGMENT AS TO THE THIRTEENTH, SIXTEENTH, SEVENTEENTH, AND NINETEENTH CAUSES OF ACTION DATE: October 6, 1995 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

1. The Motion of Plaintiff for Summary Adjudication of Issues as to the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint is GRANTED in favor of Plaintiff, Church of Scientology International, and against Defendant, Gerald Armstrong, in the amount of $200,000.

Plaintiff has met its burden of showing that defendant breached the settlement agreement and that it is entitled to liquidated damages of $50,000 for each breach. Defendant has failed to raise a triable issue as to any of the causes of action, as follows:

INVALIDITY OF LIQUIDATED DAMAGES PROVISION: Defendant's evidence regarding his attorneys' failure to represent his interests (see Facts 43 and 68) is hearsay and/or not based on personal knowledge. The opinion of defendant's attorney as to the validity of the provision (see, e.g., Facts 52-54, 57-60) is irrelevant and hearsay. The fact that two other clients signed a settlement agreement containing the same liquidated damages amount (see Facts 55-56 and 63-64) does not raise an inference that the provision was unreasonable. Defendant's evidence is insufficient to raise a reasonable inference of unequal bargaining power (no personal knowledge shown that plaintiff, as opposed to Flynn, positioned defendant as a "deal breaker"; Flynn's statements hearsay; no personal knowledge shown of plaintiff's wealth; wealth alone does not raise inference of unequal bargaining power since no showing defendant desperate for money and had to accept on plaintiff's terms). Defendant's evidence does not raise an inference that plaintiff's calculation is "unfathomable" (Fourteenth Cause of Action seeks $50,000 for each of 18 letters; Nineteenth Cause of Action is based only on declarations, not on other contacts between defendant and attorney/other clients). Defendant fails to establish how he knows plaintiff had not been injured by his statements at the time of settlement.

DURESS: Flynn's statements to defendant are hearsay. (See, e.g., D's Facts 1C and 1D.) Further, defendant has not shown that plaintiff was aware of Flynn's purported duress of defendant. (See *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 206.) Contrary to defendant's statement about duress, "careful weighing of options" is completely inconsistent with an absence "of the free exercise of his will power" or his having "no reasonable alternative to succumbing." (See *Philippine Expert & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3D 1058, 1078; *In Re Marriage of Baltins* (1989) 212 Cal.App.3D 66, 84.)

FRAUD: Flynn's statements to defendant (see Fact 78) are hearsay. The Court finds that the portions of the agreement cited by defendant (see Facts 79 and 80) do not establish a mutual confidentiality requirement. Paragraph 7(I) only prohibits the parties from disclosing information in litigation between the parties; paragraph 18(D) only prohibits disclosure of the terms of the settlement; defendant has not shown that plaintiff did either of those things. Further, "[s]omething more than nonperformance is required to prove the defendant's intention not to perform his promise." (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30-31).

NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED COVENANT: Defendant relies on the purported mutuality requirement, which he has failed to establish.

FIRST AMENDMENT: First Amendment rights may be waived by contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3D 307, 319.)

2. The plaintiff has asked that the exhibits which were previously ordered sealed be stricken as they are trade secrets, irrelevant to this motion. This request is GRANTED. They are not relevant. Further, they were filed by Mr. Armstrong *in pro per* when he is, in fact, represented by counsel.

Dated: October ___, 1995

OCT 17 1995

GARY W. THOMAS

GARY W. THOMAS
Judge of the Superior Court

Approved as to form:

Ford Greene
Attorney for Defendants Gerald
Armstrong and the Gerald Armstrong
Corporation

8860

FILED
OCT 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, Inclusive,

Defendants.

CASE NO. BC 157680

~~[PROPOSED]~~ GWT. 10/17/95

ORDER OF PERMANENT INJUNCTION

DATE: October 6, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

The Church's motion for summary adjudication of the twentieth cause of action of the Second Amended Complaint is GRANTED. The Court finds that there is no triable issue of material fact as to any of the following:

1. Plaintiff and defendant freely and voluntarily entered into a Mutual Release of All Claims and Settlement Agreement ("Agreement") in December, 1986.

2. Plaintiff performed all of its obligations pursuant to the Agreement.

3. Defendant Armstrong received substantial consideration for the promises which he made in the Agreement.

4. Since 1990, defendant Armstrong has repeatedly breached paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

5. Between 1991 and the present, Armstrong breached paragraphs 7(G), 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of testimony made pursuant to a valid subpoena, to the following private individuals, each of whom was pressing a claim or engaged in litigation with plaintiff and/or one or more of the designated beneficiaries of the Agreement:

- Vicki and Richard Aznaran, anti-Scientology litigants in the case of Vicki Aznaran, et al. v. Church of Scientology International, United States District Court for the Central District of California, Case No. CV 88-1786 (JMI) [Sep.St.Nos. 11-16];
- Joseph A. Yanny, anti-Scientology litigant in the case of Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. C 690211 and Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. BC 033035 [Sep.St.Nos. 17-

20];

- Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwatzbsrand Local Division) Case No. 19221/88. [Sep.St.Nos. 21-24];

- Reader's Digest Corporation, anti-Scientology litigant in the case of Church of Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];

- Richard Behar, anti-Scientology litigant in the case of Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard Behar, United States District Court, Southern District of New York, Case No. 92 Civ. 3024 PKL [Sep.St.Nos. 27-28];

- Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];

- David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No. 85-711 [Sep.St.Nos. 34-35];

- Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];

- Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientolouv of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];

- Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

District of California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter Between Church of Scientology Religious Education College Inc., and Nancy Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

- Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case of Church of Scientology International v. Steven Fishman, et al., United States District Court for the Central District of California Number 91-6426 HLH(Tx) [Sep.St.Nos. 45-46];
- Tilly Good, a claimant against the Church of Scientology, Mission of Sacramento Valley [Sep.St.Nos. 36-37];
- Denise Cantin, a claimant against the Church of Scientology of Orange County; Church of Scientology of Boston; and Church of Scientology, Flag Service Organization [Sep.St.Nos. 36-37]; and
- Ed Roberts, a claimant against the Church of Scientology of Stevens Creek [Sep.St.Nos. 36-37].

6. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by contacting media representatives, granting interviews and attempting to assist media representatives in the preparation for publication or broadcast magazine articles, newspaper articles, books, radio and television programs, about or concerning the Church and/or other persons and entities referred to in paragraph 1 of the Agreement. These media representatives included:

- Cable Network News: reporter Don Knapp, in March, 1992 [Sep.St.Nos. 47-48];
- American Lawyer Magazine: reporter Bill Horne, in March, 1992

[Sep.St.No. 49];

- Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];
- CAN Video Interview, with anti-Scientologists "Spanky" Taylor and Jerry Whitfield, in November, 1992 [Sep.St.No. 52];
- KFAX Radio: interview planned but prevented in April, 1993 [Sep.St.No. 53];
- Newsweek Magazine: reporter Charles Fleming, in June, 1993 and August, 1993 [Sep.St.No. 54-56];
- Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];
- Time Magazine: reporter Richard Behar, in March, 1992 and in June, 1993 [Sep.St.Nos. 58-59];
- San Francisco Recorder: reporter Jennifer Cohen, in August, 1993 [Sep.St.No. 60];
- E! Entertainment Network: reporter Greg Agnew, in August, 1993 [Sep.St.No. 61];
- WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993 [Sep.St.No. 62];
- St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia, in the fall of 1993 [Sep.St.No. 63];
- Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No. 64];
- Mirror-Group Newspapers: United Kingdom, in May, 1994 [Sep.St.No. 65];
- Gauntlet Magazine: New York, New York, reporter Rick Cusick in June, 1994 [Sep.St.No. 66];
- Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994 [Sep.St.No. 67];

- Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68]; and
- Tom Voltz: Swiss author writing a book about Scientology, in October, 1994 [Sep.St.No. 69].

7. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by preparing and distributing at least three manuscripts concerning his claimed experiences in and with Scientology, including a treatment for a screenplay which he intends to turn into a film [Sep.St.Nos.70-71].

8. Between 1991 and the present, Armstrong further breached paragraph 7(D) of the Agreement by disclosing his claimed experiences in or with Scientology to each of the following persons or groups, not previously identified: Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret Singer [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76]; Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

9. Defendant Armstrong has reiterated numerous times that he intends to continuing breaching the Agreement unless he is ordered by the Court to cease and desist [Sep.St.Nos. 87-97].

10. Plaintiff's legal remedies are inadequate insofar as the scope of the relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action because pecuniary compensation could not afford the Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER of injunction is therefore entered as follows:

Defendant Gerald Armstrong, his agents, employees, and persons acting in concert or conspiracy with him are restrained and enjoined from doing directly or indirectly any of the following:

1. Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim, regarding such claim or regarding pressing, arbitrating, or litigating it, against any of the following persons or entities:

- The Church of Scientology International, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Scientology of California, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Religious Technology Center, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Spiritual Technology, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- All Scientology and Scientology affiliated Churches, organizations and entities, and their officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Author Services, Inc., its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs, representatives, and legal counsel; and/or
- Mary Sue Hubbard;

(Hereinafter referred to collectively as "the Beneficiaries");

2. Voluntarily assisting any person (not a governmental organ or entity) defending a claim, intending to defend a claim, intending to defend an arbitration, or intending to defend any claim being pressed, made, arbitrated or litigated by any of the Beneficiaries, regarding such claim or regarding defending, arbitrating, or litigating against it;

3. Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating adversely to any of the Beneficiaries;

4. Facilitating in any manner the creation, publication, broadcast, writing, filming audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church, and/or any of the Beneficiaries;

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church, and/or any of the Beneficiaries;

In addition, it is ORDERED that, within 20 days of the issuance of this Order, Armstrong shall:

1. Return to the Church any documents which he now has in his possession, custody or control which discuss or concern Scientology, the Church and/or any person or entity referred to in paragraph 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986, other than documents which have been filed in this litigation.

It is further ORDERED that during the pendency of this litigation, documents which have been filed in this litigation may be retained by Armstrong's counsel. Those documents are to remain sealed, in the possession of Mr. Greene or any successor counsel, and may not be distributed to third parties. At the conclusion of the instant litigation, it is ORDERED that all documents from this case in counsel's possession which do not comprise counsel's work product will be delivered to counsel for plaintiff. Counsel's work product may be retained by Armstrong's counsel.

DATED: __________, 1995

OCT 17 1995

GARY W. THOMAS

THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE

8869

FILED
OCT 25 1994
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. 157 680

[PROPOSED] ORDER CONCERNING MOTIONS FOR SUMMARY JUDGMENT

TRIAL DATE: September 29, 1994

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HUB LAW OFFICES

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This matter came on for hearing on September 9, 1994, on motion of plaintiff Church of Scientology International ("Church") for Summary Judgment on Gerald Armstrong's Cross-complaint, and on motion of defendant, Gerald Armstrong ("Armstrong") for Summary Judgment or, alternatively, Summary Adjudication on the Church's Complaint. Church appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

1. The motion of plaintiff/Cross-defendant Church of Scientology International for summary judgment on the cross-complaint of Gerald Armstrong is GRANTED.

2. Armstrong's claim based on the Miscavige declaration is barred by the absolute judicial privilege of Civil Code Section 47, Subdivision (b). The declaration was provided in a judicial proceeding. (See Second Amended Cross-Complaint, ¶69.) The communication was made by a participant authorized by law (Undisputed Fact 7). Contrary to Armstrong's argument, the communication was made "to achieve the objects of the litigation: and has "some connection or logical relation to the action." (See Undisputed Facts 4 and 5.) Armstrong attempts to raise a triable issue of fact by showing that the Miscavige declaration was submitted in connection with a discovery related matter while the Young declaration was submitted in connection with a summary judgment motion. This evidence is not sufficient to raise a

triable issue. First, Armstrong cites no evidence showing the context in which Young's declaration was submitted. Second, and more importantly, "proceeding" is not limited to the particular issue before the court at that moment. (See Radar v. Thrasher (1972) 22 Cal.App.3d 883, 889.) The statements by Miscavige go to Armstrong's motives and credibility in testifying as to the matters set forth in the narrative statement. (See Undisputed Fact 5.) Thus, there is "some connection" to the Fishman action, and by its action in submitting the declaration, Church is clearly trying to achieve an object of the litigation by having the trier of fact not believe Armstrong.

3. Armstrong's claim based on misuse of financial records obtained through discovery fails. Church's evidence shows that it used the financial records only to prepare for trial in this action. (Fact 17, citing Exhibits 3 and 4.) Armstrong's efforts to raise a triable issue fail. First, his attempt to show a violation of a protective order is not sufficient in that it does not show any efforts by Church to "accomplish[] . . . an improper purpose" or to "obtain an unjustifiable collateral advantage" (i.e., no "use" of the discovery documents). (Younger v. Solomon (1974) 38 Cal.App.3d 289, 297.) Second, his evidence regarding the document titled "Who is Gerald Armstrong?" is not sufficient in that it does not show that any statement in that document was based on his personal financial information. In fact, every statement in the document was contained in Church's original complaint. (Compare Exhibit 1(N), p. 4 with Complaint, ¶¶ 2 and 39.)

4. Armstrong's motion for summary judgment or,

alternatively, summary adjudication on Church's complaint is DENIED. First, Church brings this action under Civil Code Section 3439.04, not 3439.05 (See Complaint ¶¶ 29-31, 36-38); thus, proof of insolvency is not required. Second, the truth or falsity of Armstrong's religious beliefs are not relevant in determining, for example, whether Armstrong received "reasonably equivalent" consideration and whether he knew or should have known he would incur a debt to Church beyond his ability to pay. (§ 3439.04, Subd. (b).) Third, this action does not require the court to establish any religion. The religious beliefs of the parties are irrelevant in determining the issues in this action.

5. Armstrong filed many of his opposition papers three days late (due 8/26, filed 8/29). The court has considered the late filed papers. However, Armstrong shall pay sanctions in the amount of $49, payable to the clerk of the court within 10 days.

Dated: ~~Septem~~ Oct ber 20, 1994

GARY W. THOMAS

GARY W. THOMAS
Judge of the Superior Court

Submitted by:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: Laurie J. Bart
Laurie J. Bartilson
Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

8873

APPROVED AS TO FORM:

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GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

By:________________________________
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GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	**No. BC 052395** **VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS, AND BREACH OF CONTRACT**
GERALD ARMSTRONG, Cross-Complainant, -vs- CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation, CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, RELIGIOUS TECHNOLOGY CENTER, a California Corporation, CHURCH OF SPIRITUAL	

TECHNOLOGY,)
a California Corporation,)
AUTHOR SERVICES, INCORPORATED,)
a California Corporation,)
AUTHOR'S FAMILY TRUST, ESTATE)
OF L. RON HUBBARD, DAVID)
MISCAVIGE, NORMAN STARKEY)
and DOES 1 through 100,)
inclusive,)
)
Cross-Defendants.)
)
)

Cross-Complainant GERALD ARMSTRONG alleges as follows:

PARTIES

1. Cross-Complainant GERALD ARMSTRONG, hereinafter, "ARMSTRONG," is a resident of Marin County, California.

2. Cross-Defendants CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI," CHURCH OF SCIENTOLOGY OF CALIFORNIA, hereinafter "CSC," RELIGIOUS TECHNOLOGY CENTER, hereinafter "RTC," CHURCH OF SPIRITUAL TECHNOLOGY, hereinafter "COST," and AUTHOR SERVICES, INCORPORATED, hereinafter "ASI," are corporations organized and existing under the laws of the State of California, having principal offices and places of business in California and doing business within the State of California within the territorial jurisdiction of this Court.

3. Cross-Defendants AUTHOR'S FAMILY TRUST, hereinafter "AFT," and ESTATE OF L. RON HUBBARD, hereinafter "ERH," are entities that are residents of the State of California.

4. Cross-Defendant DAVID MISCAVIGE, hereinafter "MISCAVIGE," is an individual domiciled in the State of California.

5. Cross-Defendant NORMAN STARKEY, hereinafter "STARKEY," is an individual domiciled in the State of California.

6. At all times herein mentioned, each Cross-Defendant was the agent, employee or coconspirator of each of the remaining Cross-Defendants, and in doing the things herein mentioned, each Cross-Defendant was acting within the course and scope of its employment and authority as such agent and/or representative and/or employee and/or coconspirator, and with the consent of the remaining Cross-Defendants.

7. Corporate Cross-Defendants named in paragraph 2, above, are subject to a unity of control, and the separate alleged corporate structures were created as an attempt to avoid payment of taxes and civil judgments and to confuse courts and those seeking redress for these Cross-Defendants' acts. Due to the unity of personnel, commingling of assets, and commonality of business objectives, these Cross-Defendants' attempts at separation of these corporations should be disregarded.

8. The designation of Cross-Defendants as "churches" or religious entities is a sham contrived to exploit the protection of the First Amendment of the United States Constitution and to justify their criminal, and tortious acts against ARMSTRONG and their others. Cross-Defendant corporations are an international, money-making, politically motivated enterprise which subjugates and exploits its employees and customers with coercive psychological techniques, threat of violence and blackmail. Cross-Defendant corporations, CSI, CSC, RTC, COST and ASI act as one organization and are termed hereinafter as the "ORG."

9. Cross-Defendant MISCAVIGE controls and operates the ORG and uses it to enforce his orders and carry out his attacks on

groups, agencies or individuals, including the acts against ARMSTRONG alleged herein to the extent there is no separate identity between MISCAVIGE and the ORG and any claim of such separate identity should be disregarded.

10. Cross-Defendant entities AFT and ERH derive financial benefit from the ORG, participate in its acts against groups, agencies or individuals, including ARMSTRONG, and participate in MISCAVIGE's and the ORG's efforts to avoid payment of taxes and civil judgments and to confuse courts and persons seeking redress of grievances against MISCAVIGE and the ORG.

11. Cross-Defendant STARKEY controls and operates AFT and ERH and uses them in conspiracy with MISCAVIGE to carry out their attacks on groups, agencies or individuals, including the acts against ARMSTRONG alleged herein.

12. Cross-Defendants DOES 1 through 100, inclusive, are sued herein under such fictitious names for the reason that the true names and capacities of said Cross-Defendants are unknown to ARMSTRONG at this time; that when the true names and capacities of said Cross-Defendants are ascertained ARMSTRONG will ask leave of Court to amend this Cross-Complaint to insert the true names and capacities of said fictitiously named Cross-Defendants, together with any additional allegations that may be necessary in regard thereto; that each of said fictitiously named Cross-Defendants claim that ARMSTRONG has a legal obligation to Cross-Defendants by virtue of the facts set forth below; that each of said fictitiously named Cross-Defendants is in some manner legally responsible for the acts and occurrences hereinafter alleged.

FACTUAL ALLEGATIONS

13. From 1969 through 1981 ARMSTRONG was a Scientologist who devoted his life to Scientology founder, L. Ron Hubbard, the ideals he proclaimed and the Scientology organization he claimed to have built to promulgate those ideals. After leaving Hubbard's and the organization's employ and control in December 1981, ARMSTRONG was declared by the ORG a "Suppressive Person," or "SP," which designated him an "enemy," and became the target of Hubbard's policy of "Fair Game," which states:

> "ENEMY - SP Order. Fair Game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

The ORG, using Cross-Defendant herein CSC as Plaintiff, filed a lawsuit, No. C 420153, in the Los Angeles Superior Court against ARMSTRONG on August 2, 1982. ARMSTRONG filed a Cross-Complaint against Cross-Defendants CSC and L. RON HUBBARD September 17, 1982, and a Third Amended Cross-Complaint against Cross-Defendants CSC, CSI, RTC and L. RON HUBBARD July 1, 1983. The Complaint and the Cross-Complaint thereto, hereinafter referred to together as Armstrong I, were bifurcated and the underlying Complaint was tried without a jury in 1984. A Memorandum of Intended Decision was rendered by Judge Paul G. Breckenridge, Jr. June 20, 1984 and entered as a Judgment August 10, 1984. The ORG appealed.

14. During the Armstrong I litigation the ORG carried out a massive and international campaign of Fair Game against ARMSTRONG and his lawyer, Michael J. Flynn of Boston,

Massachusetts, hereinafter "Flynn," who had been the prime mover in much of the anti-ORG-related litigation throughout the United States. Acts against ARMSTRONG pursuant to Fair Game included assault, an attempted staged highway accident, attempted entrapment, theft of private papers and original artwork, dissemination of information from his confidential "counseling" records, filing false criminal charges on at least five occasions, global defamation, threat of murder, and illegal electronic surveillance. ARMSTRONG learned during the period he was represented in the litigation by Flynn that Fair Game acts against Flynn included attempted murder, theft of private papers, threats against his family, defamation, thirteen frivolous lawsuits, spurious bar complaints, and framing with the forgery of a $2,000,000 check on a bank account of L. Ron Hubbard.

15. In the fall of 1986, while working as a paralegal in the Flynn firm, ARMSTRONG was aware that settlement talks involving all the ORG-related cases in which Flynn was either counsel or party were occurring in Los Angeles, California between Flynn and the ORG. Such talks had occurred a number of times over the prior four years. On December 5, 1986 ARMSTRONG was flown to Los Angeles, as were several other of Flynn's clients with claims against the organization, to participate in a "global settlement." Prior to flying to Los Angeles, ARMSTRONG had reached an agreement with Flynn on a monetary figure to settle Armstrong I, but did not know any of the other conditions of settlement.

16. After ARMSTRONG's arrival in Los Angeles, Flynn showed him a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement," hereinafter "the settlement

agreement," and some other documents including affidavits, and was advised by Flynn that he was expected to sign them all. Upon reading the settlement agreement ARMSTRONG was shocked and heartsick. ARMSTRONG told Flynn that the condition of "strict confidentiality and silence with respect to his experiences with the" ORG, since it involved over seventeen years of his life was impossible to perform. ARMSTRONG told Flynn that the liquidated damages clause was outrageous; that pursuant to the agreement ARMSTRONG would have to pay $50,000.00 if he told a medical doctor or psychologist about his experiences from those years, or if he put on a job resume what positions he had held during his organization years. He told Flynn that the requirements of non-amenability to service of process and non-cooperation with persons or organizations adverse to the ORG were obstructive of justice. He told Flynn that agreeing to leave the ORG's appeal of the Breckenridge decision and not respond to any subsequent appeals was unfair to the courts and all the people who had been helped by the decision. ARMSTRONG told Flynn that an affidavit the ORG was demanding that he sign was false, that there had been no management change, that his private preclear folders were still being culled, and that he had the same disagreements with the ORG's Fair Game policies and actions, which had continued without change up to that date. ARMSTRONG told Flynn that he was being asked to betray everything and everyone he had fought for against organization injustice.

17. In answer to ARMSTRONG's objections to the settlement agreement Flynn said that the silence and liquidated damages clauses, and anything which called for obstruction of

justice were "not worth the paper they [were] printed on." Flynn stated that representation a number of times and in a number of ways; e.g., that ARMSTRONG could not contract away his Constitutional rights; that the conditions were unenforceable. Flynn stated that he had advised the ORG's lawyers that those conditions in the settlement agreement were not worth the paper they were printed on, but that the ORG, nevertheless, insisted on their inclusion and would not agree to any changes. Flynn pointed out to ARMSTRONG the clauses in the settlement agreement concerning his release of his claims against the ORG and the ORG's release of its claims against ARMSTRONG and stated that they were the essential elements of the settlement and what the organization was paying for.

18. Flynn stated to ARMSTRONG at that time that he was sick of the litigation and the threats to him and his family, and that he wanted to get out. Flynn stated that all the people involved in his side of the ORG-related litigation were sick of it and wanted to get on with their lives. He said that as a condition of settlement he and his co-counsels in the ORG-related litigation had agreed to not become involved in that litigation in the future. Flynn conveyed to ARMSTRONG a hopelessness concerning the inability of the courts of this country to deal with the ORG, its lawyers and their contemptuous abuse of the justice system. Flynn told ARMSTRONG that if he didn't sign the documents all he had to look forward to was more years of harassment and misery. When ARMSTRONG expressed his continuing objections to the settlement agreement, Edward Walters, whom Flynn had kept present in the room during this discussion with ARMSTRONG, and who was

another of Flynn's clients and a participant in the settling of Flynn's ORG-related litigation, yelled at ARMSTRONG accusing him of killing the settlement for everyone, that everyone else had signed or would sign, and that everyone else wanted the settlement. Flynn told ARMSTRONG that the ORG would only settle with everyone together; otherwise there would be no settlement. Flynn did agree to ask the ORG to include a clause in ARMSTRONG's settlement agreement allowing him to keep his creative works relating to L. Ron Hubbard or the organization.

19. Flynn stated to ARMSTRONG that a major reason for the settlement's "global" form was to give the ORG the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. He said that the ORG wanted peace and unless ARMSTRONG signed the ORG's documents there would be no peace. Flynn stated that the ORG's attorneys had promised that the affidavit ARMSTRONG considered false would only be used by the ORG if ARMSTRONG began attacking it after the settlement. Since ARMSTRONG had no intention of attacking the ORG, understood that the offensive affidavit would never see the light of day.

20. During ARMSTRONG's meeting with Flynn he found himself facing a dilemma. If he refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had already been flown to Los Angeles in anticipation of a settlement, would be disappointed and would continue to be subjected to organization harassment for an unknown period of time. ARMSTRONG had been positioned as a deal-breaker and led to believe he would lose the support of some, if not all, of the

settling claimants, several of whom were key witnesses in his case against the ORG. ARMSTRONG was led to believe that all the lawyers involved in his case desperately wanted out of the ORG-related litigation, and should he not sign the settlement documents would become unhappy and unwilling in their representation of him. ARMSTRONG reasoned that, on the other hand, if he did sign the settlement documents all his co-litigants, some of whom he knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. ARMSTRONG believed that Flynn and his other lawyers would be happy and the threat to them and their families removed. ARMSTRONG believed that the ORG would have the opportunity its lawyers said it desired to clean up its act, and start anew. Armed with Flynn's assurance that the conditions he found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the ORG's attorneys were also aware of that fact, ARMSTRONG put on a happy face and on the following day went through the charade of a videotaped signing. A true and correct copy of the settlement agreement is attached hereto as Exhibit A.

21. On December 11, 1986, pursuant to stipulation, Judge Breckenridge issued orders dismissing the Armstrong I Cross-Complaint, directing that the settlement agreement be filed and retained by the clerk under seal, releasing to the ORG all trial exhibits and other documents which had been held by the clerk of the Court, and sealing the entire Court file. Despite the Court's specific order the ORG never filed the Settlement Agreement.

22. On December 18, 1986 the California Court of

Appeal, Second Appellate District, Division Three, issued an unpublished opinion dismissing the ORG's appeal from the Breckenridge decision on the ground that there would be no appealable final judgment until after trial of the Armstrong I Cross-Complaint.

23. The ORG filed a Petition for Rehearing of its appeal in the Court of Appeal, which was denied January 15, 1987; then a Petition for Review by the California Supreme Court which was denied March 11, 1987. On January 30, 1987 the ORG filed in the Los Angeles Superior Court an "Unopposed Motion to Withdraw Memorandum of Intended Decision," which Judge Breckenridge denied February 2, 1987. On February 9, 1987 the ORG filed a Notice of Appeal from the orders issued pursuant to stipulation by Judge Breckenridge on December 11, 1986.

24. The ORG, and all Cross-Defendants herein, did not desire peace from the December 1986 settlement with ARMSTRONG but an advantage wherein they could continue to attack him without his being able to respond. They removed his lawyers from defending him, and used his lead lawyer, Flynn, as their agent to relay to ARMSTRONG threats of litigation and to keep him from responding to their attacks. Immediately following the settlement ORG operatives contacted Beverly Rutherford, one of ARMSTRONG's friends from his pre-Scientology past, to try to get information from her concerning ARMSTRONG of a personal and embarrassing nature to be used against him. Also immediately following the settlement the ORG delivered a pack of documents concerning and attacking ARMSTRONG to reporters Robert Welkos and Joel Sappell of the Los Angeles Times. The ORG has continued from the date of the

settlement to collect intelligence information on ARMSTRONG, to consider him an enemy and to treat him as Fair Game. The settlement itself in intention, form, and effect was an act of Fair Game.

25. Although contacted a number of times by the media for statements concerning the ORG or Hubbard in the three years following the settlement, ARMSTRONG did not make any public statements during that period.

26. In the fall of 1987 ARMSTRONG received a document, which had been created and circulated by the ORG to discredit ARMSTRONG and writer Bent Corydon. In this document the ORG accused ARMSTRONG of "numerous false claims and lies," of "incompetence as a researcher," as having "stolen valuable documents from [ORG] archives," and of being part of "a small cabal of thieves, perjurers and disreputable sources." Such statements were themselves lies, known to the ORG to be lies, malicious, and intended to destroy ARMSTRONG's reputation and credibility. In this document as well the ORG describes ARMSTRONG's experiences in the organization as Hubbard's archivist and biographical researcher, and discusses aspects of the Armstrong I litigation, all in violation of the letter and spirit of the settlement.

27. In early 1988 ARMSTRONG received a number of affidavits the ORG had filed in Miller, which accuse ARMSTRONG of, inter alia, retaining documents in violation of a Los Angeles Superior Court order, providing documents to Russell Miller in violation of a court order, and violating court sealing orders. The affidavits accuse ARMSTRONG of being "an admitted agent

provocateur of the U.S. Federal Government who planned to plant forged documents in [ORG] files which would then be "found" by Federal officials in subsequent investigations as evidence of criminal activity," and of intending to "plant forged documents within the [ORG] and then using the contents to get the [ORG] raided. All of the ORG's accusations regarding ARMSTRONG in the affidavits filed in Miller are false, known by the ORG to be false, malicious and intended to destroy ARMSTRONG's credibility. ARMSTRONG has proven repeatedly to the ORG that its accusations are false, but the ORG has not corrected the falsehoods wherever they have been uttered or written but has continued to spread its lies about ARMSTRONG.

28. The ORG's affidavits filed in Miller also contain descriptions of ARMSTRONG's experiences in the organization and conditions of the settlement agreement. At the same time the ORG demanded that ARMSTRONG not discuss his own experiences or conditions of settlement on penalty of $50,000.00 an utterance. The ORG itself filed documents in the case straight out of the sealed Armstrong I file. Such acts are intended to bring about ARMSTRONG's mental disintegration and total destruction, are conscious and premeditated acts by the ORG of Fair Game, and have caused ARMSTRONG great anguish.

29. Also in October 1987 ARMSTRONG was contacted by a reporter from the London Sunday Times who advised him that ORG representatives had given the newspaper a pack of documents concerning him. The reporter said that the ORG representatives were claiming that ARMSTRONG was an agent provocateur who tried to plant forged documents in the organization and wanted to destroy

the scientology religion. The reporter also said that the ORG representatives had given the newspaper a videotape of ARMSTRONG they claimed showed him conspiring to overthrow ORG management. ARMSTRONG told the reporter that although he considered the ORG's attacks violated the settlement agreement he would not respond to them.

30. On December 21, 1988 ARMSTRONG received a call from Flynn who relayed a message from Michael Lee Hertzberg, one of the organization's leading lawyers stating that he wanted ARMSTRONG to file a pleading to keep the court file sealed in the face of efforts by the plaintiff in Corydon v. CSI, Los Angeles Superior Court case no. C 694401, who had filed a motion to unseal the Armstrong I court file. Flynn stated that Hertzberg had threatened that if ARMSTRONG failed to cooperate Hertzberg would release a private and personal document belonging to ARMSTRONG regarding one of his dreams specifically sealed by Judge Breckenridge in Armstrong I.

31. On December 27, 1988 ARMSTRONG spoke again by phone with Flynn, who advised ARMSTRONG that due to a court order unsealing the file in Armstrong I, he was going to file a pleading to say that the settlement documents should remain sealed. ARMSTRONG disagreed and advised Flynn he did not want such a paper filed, but on November 15, 1989 ARMSTRONG received notice that Flynn had filed such a paper against his wishes.

32. On October 11, 1989 ARMSTRONG was served with a deposition subpoena duces tecum which had been issued by Toby Plevin, an attorney representing Corydon in his litigation against the ORG.

33. On October 23, 1989 ARMSTRONG received a call from Heller who stated that the ORG would seek a protective order to prevent Armstrong's deposition in Corydon from going forward, that Armstrong should be represented by an ORG lawyer, that to maintain the settlement agreement ARMSTRONG could only answer questions by court order, that ARMSTRONG should refuse to answer the deposition questions and force Corydon to get an order from the court compelling ARMSTRONG to answer.

34. On October 25, 1989 Heller told ARMSTRONG that he had a problem with ARMSTRONG responding to deposition questions concerning such things as L. Ron Hubbard's misrepresentations or ARMSTRONG's period as Hubbard's archivist in the organization, that he wanted to have an attorney present to instruct ARMSTRONG not to answer such questions so that Corydon would have to move to compel an answer, and that if the court ordered sanctions for ARMSTRONG's refusal to answer, the ORG would indemnify him. Heller further stated that ARMSTRONG had a contractual obligation to the ORG, and that if ARMSTRONG did answer deposition questions he would have breached the settlement agreement and may be sued.

35. Based on Heller's threats, the earlier threats and ORG post-settlement attacks described above, ARMSTRONG's understanding of his importance to and involvement with the ORG, and his knowledge of the ORG, its fraud and Fair Game, moved him at that time to protect himself by beginning to assemble documentation and prepare a declaration to oppose these ORG abuses.

36. On November 1, 1989 Heller, on behalf of ORG entity ASI, a defendant in Corydon, filed a motion "to Delay or Prevent

the Taking of Certain Third Party Depositions," relating to the deposition of ARMSTRONG. Heller stated in the motion:

> "One of the key ingredients to completing these settlement, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlements themselves."

37. On November 18, 1989 ARMSTRONG received a copy of a videotape edited from videotapes of him made in 1984 by ORG intelligence operatives and used thereafter against him. This copy had been given to the London Sunday Times, along with a package of documents concerning ARMSTRONG by ORG operatives. Taped to the video cassette was the business card of Eugene M. Ingram, the ORG's private detective who had set up the videotaping.

38. On November 20, 1989 Heller contacted ARMSTRONG and advised him that he wanted ARMSTRONG to execute ORG a declaration that ARMSTRONG had either no or minimal contact with Corydon in the organization, and that subsequent to leaving he had received no information about Corydon. ARMSTRONG told Heller that he knew Corydon quite well and that he saw himself as a relevant witness, and would go forward with the deposition. Heller said to do so would be a mistake because only the ORG would ever help him, that ARMSTRONG should assist the ORG because it had honored its agreement, that the ORG had signed a non-disclosure agreement as well and as far as he knew had lived up to its agreement. When

ARMSTRONG disagreed, Heller reiterated at the end of the conversation that if ARMSTRONG started to testify, for example about the Hubbard biography project, or things he and the ORG considered irrelevant, he would be sued for breach of contract.

39. On November 30, 1989 ARMSTRONG attended a hearing in Corydon of the ORG's motion to prevent his deposition from going forward where he was served with a subpoena duces tecum ordering him to appear as a witness in the trial of Religious Technology Center v. Joseph A. Yanny, Los Angeles Superior Court Case no. C 690211.

40. On February 15, 1990 ARMSTRONG received a call from one of Michael Flynn' partners, attorney Michael A. Tabb, who said he had been called by Heller who told him that the ORG considered ARMSTRONG had violated the settlement agreement by being in the courthouse when he was served in Yanny, that they intended to prove it, and that he would be sued.

41. On January 18, 1990 ARMSTRONG received a copy of Appellants' Opening Brief which the ORG had filed December 21, 1989 in appeal No. B025920 in Division Three of the Second Appellate District in the California Court of Appeal wherein the ORG sought a reversal of the 1984 Breckenridge decision. On January 30, 1990 ARMSTRONG received the Reply Brief of Appellants and Response to Cross-Appeal filed in Division Four in the Second Appellate District in an appeal entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant; Bent Corydon, Appellee, No. B038975 in which the ORG sought a reversal of Judge Geernaert's ruling unsealing the Armstrong I court file.

42. Because the settlement agreement prohibited ARMSTRONG from opposing any of the appeals the ORG might take, he filed a Petition for Permission to Respond in the B025920 Division Three appeal February 28, 1990, and in the B038975 Division Four appeal March 1, 1990. When his petitions were granted, ARMSTRONG filed a Respondent's Briefs opposing the ORG appeals.

43. ARMSTRONG's March 15, 1990 declaration that he had filed in the Court of Appeal was used by Corydon as an exhibit supporting a motion for an order directing non-interference with witnesses. In its opposition thereto the ORG Heller contradicted what he earlier had said to ARMSTRONG about the agreement being reciprocal, now stating that the ORG was free to talk about Armstrong, but that Armstrong was not free to talk about it. Heller's lies to ARMSTRONG, his lies in sworn declarations about the reciprocality of the settlement agreement, the trap ARMSTRONG had been placed in by the ORG and his own attorney, who, because of ORG Fair Game tactics, had deserted him, caused ARMSTRONG great distress and grief.

44. In his March 27 1990, declaration and in the opposition to plaintiff's motion for non-interference with witnesses in Corydon, Heller denied that the three telephone calls with ARMSTRONG occurred, denied offering to have the ORG pay for an attorney at ARMSTRONG's deposition in Corydon, denied offering to indemnify ARMSTRONG for sanctions which might be imposed by the court, and denied threatening ARMSTRONG with litigation. These denials are lies.

45. In his March 26, 1990 declaration, Kenneth Long, the ORG staff member who had executed a number of the affidavits

concerning ARMSTRONG which were filed in the Miller case, stated:

> "In January, 1987, following settlement of Scientology (sic) of California ("CSC"), Armstrong turned over to CSC all [ORG]-related documents in his possession. I personally inspected the documents turned over by Armstrong, and found a number of copies of the documents which Armstrong had previously sworn that he had surrendered to the Clerk of the Court. [ ] Based on my discovery of these documents, I concluded that Armstrong had intentionally perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States."

Long's statement is false, reckless and malicious. Long stated as well that his affidavits attacking ARMSTRONG in Miller were necessary "to detail the elements of the breach of confidence against Miller and Penguin, and the claim could not have been brought without explaining the underlying actions taken by Armstrong."

46. On March 21, 1990 ARMSTRONG spoke by phone with Michael Flynn, who said that he had been called by Lawrence Heller two or three weeks before. Flynn said that Heller told him that ARMSTRONG was right then sitting in the courtroom at the Yanny trial and he asked Flynn to call ARMSTRONG and tell him that if he testified in Yanny he would be in violation of the settlement agreement and would be sued. ARMSTRONG had been present at the Yanny trial March 5, 1990.

47. In early April, 1990 ARMSTRONG received a call from ORG lawyer Eric Lieberman who threatened dire consequences if ARMSTRONG continued to speak out against the ORG in violation of the settlement agreement. ARMSTRONG related to Lieberman a list of the ORG's post-settlement attacks on ARMSTRONG in violation itself of the agreement. Lieberman dismissed ARMSTRONG's grievances as insignificant.

48. On July 8, 1988 the Internal Revenue Service issued a document entitled "final adverse ruling" to Cross-Defendant herein COST denying its application for tax exempt status. In that ruling the IRS stated:

> "In support of the protest (protest conference was held in January 1987) to our initial adverse ruling, we were supplied with copies of affidavits dated December 4, 1986, from Gerald Armstrong and Laurel Sullivan. Ms. Sullivan was the person in charge of the MCCS project (the ORG's "Mission Corporate Category Sort-out," the purpose of which was to devise a new organizational structure to conceal L. Ron Hubbard's continued control). The affidavits state that the new church management 'seems to have returned to the basic and lawful policies and procedures as laid out by the founder of the religion, L. Ron Hubbard.' The affidavits conclude as follows: 'Because of the foregoing, I no longer have any conflict with the Church of Scientology or individual members affiliated with the Church. Accordingly I have executed a mutual release agreement with the Church of Scientology and sign this

> affidavit in order to signify that I have no quarrel with the Church of Scientology or any of its members.'"

The ORG filed the ARMSTRONG affidavit in the COST case for the purpose of destroying his credibility and in violation of the representation the ORG had Flynn make to ARMSTRONG during settlement that such affidavit would never be used unless ARMSTRONG attacked the ORG after settlement. The ORG's filing of the affidavit, its use of the courts, and the campaign to destroy ARMSTRONG's reputation have caused ARMSTRONG great emotional distress.

49. In August 1991 while in South Africa ARMSTRONG was informed by Stuart Cutler, a lawyer for Malcolm Nothling, litigant against the ORG, that the ORG had provided ARMSTRONG's personal papers regarding the 1985 dream which had been sealed in Armstrong I, to the ORG's South African legal representatives for use against ARMSTRONG in the Nothling litigation in which ARMSTRONG was expected to testify. The dissemination of this document in South Africa caused ARMSTRONG great embarrassment and emotional distress.

50. On August 12, 1991 the ORG filed a lawsuit against 17 agents of the IRS, case no. 91-4301-SVW in United States District Court, Central District of California for more than $120,000,000.00. The ORG used therein a false rendition of the 1984 illegal videotaping of ARMSTRONG, which videotape had been sealed in the Armstrong I court file. The ORG stated in its complaint:

> "The infiltration of the [ORG] was planned by the LA CID along with former [ORG] member Gerald Armstrong, who

> planned to seed [ORG] files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the [ORG] hierarchy which would then turn over all [ORG] documents to the IRS for their investigation."

The ORG knew that these accusations were false, knew that ARMSTRONG knew they were false.

51. Upon his return to the United States from South Africa, Armstrong visited the law office of Ford Greene who asked for his help. Armstrong, who is a trained paralegal, and lived in the same Marin County town as Greene, agreed to help him, and has been working with him from that time until the present. The moment he began working in Greene's office the ORG began to terrorize him with constant surveillance by ORG intelligence operatives, videotaped him, embarrassed him, caused disturbances in the neighborhood of Greene's law firm, and caused him great fear. The ORG has a reputation of using its intelligence operatives or private investigators to assault its perceived enemies, frame them, entrap them, terrorize them, lie about them, and steal from them. Judge Breckenridge in Armstrong I, had found that:

> "Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by [the ORG]; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property,

spy in his windows, create disturbances, and upset his neighbors."

The August 1991 surveillance of ARMSTRONG by ORG operatives was intended to and caused ARMSTRONG severe shock and emotional distress.

52. ARMSTRONG called and wrote to ORG lawyer Eric Lieberman on August 21 and 22, 1991 protesting the surveillance, videotaping and ORG terror tactics. Lieberman never responded, but the ORG responded with renewed attacks on ARMSTRONG, filing perjurious declarations about him in the Aznaran case accusing him of, inter alia, being in Greene's office (during the period when he had been in South Africa), of being employed by Joseph Yanny while working for Greene, and of being Yanny's extension in the Aznaran case. The ORG used these lies in a series of attempts to have the Aznaran case dismissed, and in further attempts to destroy ARMSTRONG's credibility and his capacity to defend himself from the ORG's attacks. The ORG also filed perjurious declarations in Aznaran concerning the illegal 1984 Armstrong operation, claiming, inter alia, that the operation was a police-sanctioned investigation, that ARMSTRONG was plotting against the ORG and seeking out staff members who would be willing to assist him in overthrowing its leadership, and that ARMSTRONG's theory of litigation against the ORG was to fabricate the facts. These lies were used in a series of attempts to deny the Aznarans justice and to attack ARMSTRONG's credibility and leave him defenseless before the ORG's assault. The ORG moreover used in these attempts transcripts of the illegal 1984 videotaping of ARMSTRONG which had been sealed in the Armstrong I court file. The ORG knew its lies

filed in the Aznaran case regarding ARMSTRONG were lies, knew it was using sealed documents to attack ARMSTRONG, knew that such caused ARMSTRONG great emotional distress, and knew that its acts in Armstrong I had caused him emotional distress for which it had paid ARMSTRONG a significant sum of money. The ORG's statements filed in Aznaran regarding ARMSTRONG were malicious and an abuse process. ARMSTRONG filed a declaration in Aznaran dated September 3, 1991 detailing the lies the ORG had up to that time filed about him in that case and stating the truth of the matters. On June 23, 1992, Judge Ideman, presiding in the Aznaran case denied all the ORG's motions in which it had filed its attacks on ARMSTRONG.

53. On October 3, 1991 the ORG, using CSC, CSI and RTC as Plaintiffs, filed a motion in Los Angeles Superior Court in the Armstrong I case to enforce the settlement agreement in which it charged that ARMSTRONG's declaration in Aznaran which rebutted the ORG's lies filed about him in that case was a violation of the settlement agreement. That motion, in which the ORG sought from ARMSTRONG $100,000.00 in damages for his responses to ORG attacks, was denied on December 23, 1991 by Judge Geernaert, who stated during the hearing of that date:

> " So my belief is Judge Breckenridge, being a very careful judge, follows about the same practice and if he had been presented that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the [ ] most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that,

okay the case is not settled.

I know we like to settle cases. But we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

54. Heedless of Judge Geernaert's comments the ORG on February 4, 1992 filed the underlying lawsuit, hereinafter Armstrong II, this time seeking $1,700,000.00 in damages. On March 26, 1992 the ORG sought to have ARMSTRONG held in contempt of court for communicating to the media about the litigation after the ORG had itself given an interview to the media and in response to the ORG's public comments about him. Judge Dufficy of the Marin Superior Court, then presiding over the Armstrong II litigation, refused to hear the ORG's effort to have ARMSTRONG found in contempt. The effort, however, demonstrates the ORG's intention: create a scenario in which ARMSTRONG responds to ORG attacks and then have him jailed for his response. Then, pursuant to ORG policy, neutralize him.

55. On February 19, 1992 Ford Greene, ARMSTRONG's attorney in Armstrong II, wrote ORG attorney Laurie Bartilson requesting that ARMSTRONG's former attorneys in Armstrong I, Michael Flynn, Julia Dragojevic and Bruce Bunch, each of whom were specifically prohibited by contract with the ORG from giving ARMSTRONG a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. The ORG refused. On February 24, 1992 Greene wrote Bartilson requesting that the other individuals who had entered into

settlement agreements with the ORG, negotiated by the ORG with Flynn in 1986, and who were specifically prohibited from providing ARMSTRONG with a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. Even though the ORG had used the fact of the other individuals' settlement agreements being substantially similar to the ARMSTRONG agreement, and cited to and relied on cases involving those individuals' settlements in its lawsuit against ARMSTRONG, the ORG refused to release them from their contract not to assist ARMSTRONG.

56. On May 27, 1992 at a hearing on a motion the ORG brought to obtain a preliminary injunction in this case, Los Angeles Superior Court Judge Sohigian stated:

> "The information that's being suppressed in this case, however, is information about extremely blameworthy behavior of the [ORG] which nobody owns; it is information having to do with the behavior of a high degree of offensiveness and behavior which is tortious in the extreme. It involved abusing people who are weak. It involves taking advantage of people who for one reason or another get themselves enmeshed in this extremist view in a way that makes them unable to resist it apparently. There appears to be in the history of [the ORG's] behavior a very, very substantial deviation between [the ORG's] conduct and standards of ordinary, courteous conduct and standards of ordinary honest behavior. They're just way off in a different

> firmament. [The ORG's] is the kind of behavior which makes you sort of be sure you cut the deck and be sure you've counted all the cards. If you're having a friendly poker game you'd make sure to count all the chips before you dealt any cards."

Despite these statements concerning the ORG and its practices, and despite the ORG's knowledge of similar rulings and judgments in Armstrong I, the case of Wollersheim v. Scientology, the case of Allard v. Scientology, the case in England Re B & G Wards, the cases of US v. Hubbard and US v. Kember, and of articles in the Los Angeles Times in 1990 and Time magazine in 1991, the ORG continues to attack ARMSTRONG and its other perceived enemies pursuant to its basic doctrine of Fair Game. The ORG's refusal to change its posture toward ARMSTRONG in the face of evidence of its nature causes ARMSTRONG severe emotional distress. Judge Sohigian denied the ORG's motion to enforce the settlement agreement in every aspect except for his right to provide testimony in anti-ORG litigation without being first subpoenaed to provide such testimony. The Sohigian ruling left ARMSTRONG free to speak and write freely about the ORG, to provide information to government agencies without the need for a subpoena and to continue to work as a paralegal.

57. ARMSTRONG has learned that MISCAVIGE possessed ARMSTRONG's original artwork and manuscript after they were stolen from ARMSTRONG's car in 1984. MISCAVIGE told Vicki Aznaran that he had ARMSTRONG's artwork and manuscript, and he described ARMSTRONG's works as weird poetry and letters to Hubbard. ORG lawyer John Peterson in 1984, in response to ARMSTRONG's demand at

that time for return of his works denied that the ORG possessed them. Now ARMSTRONG has the proof and he demands these works' return.

58. The ORG has, for over a decade, waged a campaign of hatred and psychological violence against ARMSTRONG. This campaign has been observed and condemned by courts and the media. In 1986 as an act of calculating Fair Game it used ARMSTRONG's lawyer, himself a long time target of Fair Game, to manipulate him into a settlement of his claims against the ORG which was intended to leave him lawyer-less and defenseless so that the ORG's Fair Game efforts against him could continue unopposed. In consummate cynicism the ORG claims its purpose in the settlement was to make peace. The ORG's acts against ARMSTRONG have affected every aspect of his life, taken from him the peace and seclusion he sought and threatened his health, livelihood, friendships and his very existence. These acts must stop.

FIRST CAUSE OF ACTION

(For Declaratory Relief Against All Defendants)

59. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

60. An actual controversy has arisen and now exists between ARMSTRONG and CSI concerning their respective rights and duties in that ARMSTRONG contends that the only provisions of the settlement agreement that have any legal force any effect were those whereby he dismissed his cross-complaint in Armstrong I in consideration for a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement are void as against

public policy and should be severed therefrom, and that CSI and its agents are not entitled to breach the settlement agreement while requiring ARMSTRONG to adhere thereto, whereas CSI disputes this contention and contends that it is entitled to enforce all provisions of the settlement agreement against ARMSTRONG notwithstanding the lack of mutuality thereof.

61. ARMSTRONG desires a judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.

62. A judicial declaration is necessary and appropriate at this time under the circumstances in order that ARMSTRONG may ascertain his rights and duties under the settlement agreement.

63. ARMSTRONG is being harmed by the settlement agreement insofar as his First Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted, and his reputation is being attacked in judicial proceedings which he is unable to counter without risking violation of the settlement agreement.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

SECOND CAUSE OF ACTION

(For Abuse Of Process Against All Defendants)

64. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

65. Defendants, and each of them, have abused the process of this court in a wrongful manner, not proper in the regular conduct of the proceedings in Armstrong I and in Armstrong II, and in other litigation, to accomplish a purpose for which said proceedings were not designed, specifically, the suppression of evidence, the obstruction of justice, the assassination of cross-complainant's reputation, and retaliation against said cross-complainant for prevailing at trial in Armstrong I, all so as to be able to attack cross-complainant and prevent cross-complainant from being able to take any effective action to protect himself.

66. Defendants, and each of them, acted with an ulterior motive to suppress evidence, obstruct justice, assassinate cross-complainant's reputation, and to retaliate against cross-complainant in said litigations.

67. That defendants, and each of them, have committed willful acts of intimidation, threats, and submission of false and confidential documents not authorized by the process of litigation, and not proper in the regular conduct of litigation.

68. Cross-complainant has suffered damage, loss and harm, including but not limited to his reputation, his emotional tranquillity, and privacy.

69. That said damage, loss and harm was the proximate and legal result of the use of such legal process.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

THIRD CAUSE OF ACTION

(Breach of Contract)

70. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

71. CSI, and/or its agents, and/or other Scientology-related entities having engaged in on-going breaches of said settlement agreement by making reference to ARMSTRONG (a) in communications to the press, (b) in filing pleadings and declarations in various litigations.

72. By reason of said breaches of the settlement agreement, ARMSTRONG has been damaged in an amount not presently known but believed to be in excess of the jurisdiction minimum of this Court.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION

1. For a declaration paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed from the settlement agreement and found to be of no legal force or effect.

2. For damages according to proof.

3. For attorney's fees and costs of suit.

ON THE SECOND CAUSE OF ACTION

1. For general and compensatory damages according to proof.

2. For attorney's fees and costs of suit.

ON THE THIRD CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorney's fees and costs of suit.

ON ALL CAUSES OF ACTION

1. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: October 7, 1992

HUB LAW OFFICES

By: ______________________
FORD GREENE
Attorney for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

VERIFICATION

I, the undersigned, am an officer of defendant The Gerald Armstrong Corporation in the above entitled action. I know the contents of the foregoing Amended Cross-Complaint I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this declaration was executed on the October 7, 1992 at San Anselmo, California.

By:____________________
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

DEPT. 30

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

8909

L , August 16, 1994

Honorable DAVID A. HOROWITZ , Judge
, Deputy Sheriff
2 C. AGUIRRE , C.S.L.

S. ROBLES , Deputy Clerk
LINDA NISHIMOTO #9147 , Reporter
, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff
MICHAEL LEE HERTZBERG (x)
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for Defendant
FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

MOTION BY CROSS-DEFENDANT, CHURCH OF SCIENTOLOGY INTERNATIONAL, FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT;

Motion for Summary Adjudication of a Cause of Action (SACA) GRANTED. No triable issues of material facts. The 2nd and 3rd Causes of Action have no merit. CCP 437c(f)(1).

3rd Cause of Action - Breach of Contract.

Undisputed Facts: #1-9, essentially Undisputed, Cross-Defendant has accurately described the provisions of the Agreement; #10, not sufficiently disputed, Undisputed; #11, Undisputed; #12, no sufficiently disputed, Undisputed; #13, Undisputed; #14, Undisputed; #15, not sufficiently disputed, Undisputed; #16, Undisputed.

The Agreement terms are clear and unambiguous. Cross-Complainant understood the terms and signed it. The duties and obligations of the Agreement are clearly stated. "Mutuality" and "reciprocal" duties cannot be read into the unambiguous terms of the Agreement.

There are no provisions in the Agreement prohibiting the Cross-Defendant from referring to Cross-Complainant with the press or in legal pleadings or declarations. Cross-Complainant's beliefs as to what the Agreement should have said, it's validity, or what his attorney said or did to him are not relevant. The Agreement itself acknowledges that no agreements or understandings have been made among the parties aside from those set forth in the Agreement.

2nd Cause of Action - Abuse of Process.

Undisputed Facts: #17, not sufficiently disputed, Undisputed; #18, not sufficiently disputed, Undisputed; #19, Disputed; #20, Disputed, not material; #21, not sufficiently disputed, Undisputed; #22, Undisputed; #23, Disputed as to time discovered by Church counsel; #24, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

August 16, 1994

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
		, Deputy Sheriff	LINDA NISHIMOTO #9147	, Reporter
2a	C. AGUIRRE	, C.S.L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff
MICHAEL LEE HERTZBERG (x)
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for Defendant
FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

disputed as to motivation, otherwise Undisputed; #25, not sufficiently disputed, Undisputed; #26, Undisputed; #27, disputed as to word "further", otherwise Undisputed; #28, Disputed, but not material; #29, Undisputed; #30, Undisputed that Marin Court granted a motion to Transfer; #31, Undisputed, except for term "irreparably harmed; #32, Undisputed; #33, Undisputed; #34, not sufficiently disputed, Undisputed; #35, Undisputed.

A One Year Statute of Limitations applies to an Abuse of Process cause of action. Code of Civil Procedure Section 340. Conduct allegedly occurring prior to July 22, 1991 is precluded by the one year Statute. Conduct alleged in paragraphs 13-24, 26 and 27, 29 and 30, 33-38, 40, 43-48 and para 57 are alleged to have occurred before 7/22/91 and are time barred.

The alleged conduct constituting "abuse of process" contained in paragraphs 49, 51, 52 and 55 does not constitute such abuse of process. That is, there are no allegations concerning the abuse of court process which constitutes a cause of action.

Communications with "some relation" to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b). Albertson v. Raboff.

The alleged conduct of bringing suit, contained in paragraphs 53 and 54, is not sufficient to state a cause of action for "abuse of process. The filing or maintaining of a lawsuit cannot support a claims for abuse of process. The filing of a suit to enforce the Settlement Agreement cannot support claims for abuse of process.

The conduct alleged in para 50, ie, the filing of a complaint and the use of a declaration speaking of Cross-Complainant, does not constitute abuse of process and is privileged.

Paragraph 52 alleged conduct relating to declarations filed in a case in which the Cross-Complainant is not a party. Such conduct does not constitute abuse of process and is privileged.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

August 16, 1994

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
		, Deputy Sheriff	LINDA NISHIMOTO #9147	, Reporter
2b	C. AGUIRRE	, C.S.L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff
MICHAEL LEE HERTZBERG (x)
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for Defendant
FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

MOTION FOR SUMMARY ADJUDICATION OF SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT OF GERALD ARMSTRONG, GRANTED.

David A. Horowitz

DAVID A. HOROWITZ, JUDGE

This is the order called for by Code of Civil Procedure Section 437c(f) and Code of Civil Procedure Section 437c(g). No other written order is required.

A copy of this order is sent this date via U.S. Mail addressed as follows:

MICHAEL LEE HERTZBERG
ATTORNEY AT LAW
740 BROADWAY 5TH FL
NEW YORK NY 10003

LAURIE J. BARTILSON
BOWLES & MOXON
6255 SUNSET BLVD STE 2000
HOLLYWOOD CA 90028

FORD GREENE
HUB LAW OFFICES
711 SIR FRANCIS DRAKE BLVD
SAN ANSELMO CA 94960

FILED

MAY 2 5 1995

KEENAN G. CASADY, Cle

U.S. BANKRUPTCY COURT-SANTA RO

8912

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG, No. 95-10911

Debtor.

Memorandum of Decision

Debtor Gerald Armstrong is a former member of the Church of Scientology. In 1986, he settled a lawsuit he had filed against the Church by accepting $800,000.00. In return, he agreed to refrain from divulging certain information about the Church and assisting others in their claims against the Church. The Church alleges that Armstrong has repeatedly violated the agreement. It has been prosecuting an action against Armstrong for breach of contract in state court.

Armstrong filed a Chapter 7 petition in this court on April 19, 1995. Now before the court is the Church's motion for relief from the automatic stay to pursue the state court action. The Church wants to liquidate its damages for breach of the settlement agreement, enforce the preliminary injunction issued by the state court, and seek a permanent injunction somewhat broader than the preliminary injunction. It also seeks to pursue a fraudulent conveyance action against persons to whom Armstrong allegedly gave the $800,000.00.

The fraudulent conveyance actions belong to the bankruptcy estate. If the causes of action are abandoned pursuant to section 554 of the Bankruptcy Code, then the Church may pursue them. Until then, the actions can be maintained only by the bankruptcy trustee. Accordingly, insofar as the motion addresses the fraudulent

26

conveyance actions it will be denied.

The request to pursue the action as to injunctive relief and damages raises very serious legal issues not appropriate for determination in the context of a relief from stay proceeding. These issues include whether an injunction issued to enforce a contract remains enforceable after the debtor's contractual obligations have been discharged, and whether any damages resulting from the action are dischargeable. These issues must be determined by adversary proceeding pursuant to FRBP 7001.

For purposes of this motion, it is enough for the court to note that the injunction may survive the bankruptcy discharge, and that any damages may be nondischargeable. Because of these possibilities, the court deems it appropriate for the matter to proceed in state court so long as no enforcement of any judgment is attempted without further leave of this court. To this extent, the motion will be granted. The action may of course proceed without restriction as to any defendants other than Armstrong.

Counsel for the Church shall submit an appropriate form of order.

Dated: May 25, 1995

Alan Jaroslovsky
U.S. Bankruptcy Judge

8914

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: May 25, 1995

Deputy Clerk

WILSON, RYAN & CAMPILONGO
Andrew H. Wilson
115 Sansome Street
Fourth Floor
San Francisco, CA 94104

GERALD ARMSTRONG
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

JEFFRY G. LOCKE, Trustee
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Kentfield, CA 94919-0488

FELDMAN, WALDMAN & KLINE
A Professional Corporation
Linda Sorensen
2700 Russ Building
235 Montgomery Street
San Francisco, CA 94104-3160

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,)
Plaintiff and Respondent,)
v.)
GERALD ARMSTRONG,)
Defendant and Appellant.)

No. B069450

(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DIST.
FILED
MAY 16 1994
JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

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[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

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*Assigned by the Chairperson of the Judicial Council.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On October 26, 1995 I served the foregoing document described as REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed, certified mail, as follows:

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 9493

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 26, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

Executed on October 18, 1995, at San Rafael, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

ORIGINAL

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

8928

FILED
NOV - 2 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy
J. Steele

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

✓ Date: 12/1/95
Time: 9:00 a.m.
Dept: One

TO ALL PARTIES AND TO THEIR COUNSEL:

PLEASE TAKE NOTICE that on December 1, 1995, at 9:00 a.m. in Department One of the above-entitled Court, or as soon thereafter as the matter can be heard, defendant Gerald Armstrong will move this court for an Order reconsidering its grant of summary adjudication as to the twentieth cause of action of the first amended complaint.

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This motion is brought pursuant to C.C.P. § 1008 and is based on the fact that the Court's grant of summary adjudication is patently erroneous and unfair and that newly discovered evidence increases said unfairness.

DATED: November 2, 1995

HUB LAW OFFICES

By:______________________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

On a motion for summary adjudication, it is proper for a Court in an exercise of its equity power, to grant a permanent injunction based solely on the content of Armstrong's speech as an apostate criticizing what he sees as the immorality of his former religion, while ignoring the fact that Scientology's attorney testified that both parties intended to contract maintain strict silence about the other?

II. STATEMENT OF FACTS

In response to defendant's argument that the meaning of the contract included an obligation by Scientology to maintain silence with respect to Armstrong (RT 2:15-3:27, 4:15-5:26, 7:1-8:25, 9:14-10:24, 11:19-12:22)[1], the court asserted that it was not required to consider such evidence.

> "Yes, but the facts, those facts are not relevant, and when one reads Witkin, and you can read it, One Witkin Summary of California Law, it's in section [6]84, page 617, the rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein. Evidence cannot be admitted to show intention independent of the instrument. The words are clear."

(RT 13:2-9)

The court also stated its ruling was based on the following:

> "... the papers submitted has the Los Angeles Superior Court Order. You've referred to Los Angeles and what has taken place there. The Order says, the quote is, the agree terms are clear and unambiguous. The cross-complainant understood, that's your client, understood the terms and signed it. The duties, objections, obligations of agreement are clearly stated. Mutuality and reciprocal duties cannot be read into the unambiguous terms of the agreement. There are no provisions in the agreement prohibiting the cross-defendant from referring to cross-complainant with the press or in legal pleadings or declarations."

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[1] Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a deposition subpena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth Cause of Action at ¶ 101) He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

(RT 8:25-9:8) [2]

Based on the foregoing reasons, in derogation of California law, the court refused to consider attorney Heller's testimony. Such refusal was legally improper.

III. THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES A TRIABLE ISSUE WHETHER THE AGREEMENT WAS INTEGRATED AND WHAT THE PARTIES INTENDED

> "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a contract appears to be absolutely clear on its face, the court is required to engage in preliminary consideration of extrinsic evidence to see whether it creates and ambiguity. However, if the extrinsic evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

Barris Industries, Inc. v. Worldvision Enterprises, Inc. (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v. G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934, § 983-986.

Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39. In addition to Heller's sworn representations as to the intent of the parties, Armstrong relies on Scientology's breaches of its obligation to maintain silence as to Armstrong. (Separate Statement ¶ 105)

IV. THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS

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[2] Yet another judge who construed the agreement stated, "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented with that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (*Id.* at ¶ 120)

Assuming without conceding that as a matter of contractual interpretation CSI was required to maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation. *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a legal action as well as in equity *Id.* at 728.

> Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of inequity.'"

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

> The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. *Any unconscientious conduct* upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his defense of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man. [3]

V. THE INJUNCTION VIOLATES THE FIRST AMENDMENT

The inappropriateness of the court's injunction is dramatically underscored by what the court has enjoined: Armstrong's exercise of his right as an apostate to criticize his former religion. All of the speech which the court has ordered repressed is religious in nature because the content of such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to the public, if Armstrong in response tells the truth about Scientology, Scientology will have this court jail Armstrong for contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to benefit the public has obtained a court order to silence the words of a former member who warns the public of the danger it presents. Such a legal anomaly violates at least three first amendment rights. It violates the Armstrong';s rights to free speech, free exercise of religion and the anti-establishment clause. Since this is patently unfair, it is an improper subject of the Court's equity powers notwithstanding the fact that Armstrong accepted $800,000 from Scientology. [4]

> "... above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.' [Citation."

Police Department v. Mosley (1972) 408 U.S. 92, 95-96.

Speech about religion is speech entitled to the general protections of the First Amendment.

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[3] It upsets Armstrong greatly that the court refers to him in Orwellian terms as having engaged in "double speak." (RT 4:6) Not only is a credibility determination inappropriate on a motion for summary adjudication, *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064, said characterization reflects a lack of understanding by the court of the facts. If the sworn statements of attorney Heller are true, Armstrong has not engaged in "double speak" at all.

[4] Armstrong's position has been and is that Scientology paid him to dismiss his cross-complaint and that the keep-quiet provisions were mutual. Thus, when Scientology started to discuss Armstrong's experiences in connection with it, he was free to discuss the same thing.

This includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6. It is clear that the injunction is a prior restraint on Armstrong's right to discuss his former religion.

In addition, since Scientology's Fair Game Doctrine is part of its religious ideology which includes false versions of Armstrong's experiences, such will become reality if Armstrong is jailed when he rebuts the same. This will violate the First Amendment's Establishment Clause. In order to pass muster under that clause, the governmental action must pass a three-pronged test.

> "First the [governmental order] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613.

The injunction fails the last two prongs of this test. The order advances Scientology's religious purpose while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine allowing it to lie about Armstrong and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot allow him to remain silent in the face of such lies, this court will have to jail him. It is inconceivable that in our democratic society the Government will enforce an religious edict by jailing a citizen who dares to speak out against it.

VI. THE HELLER DECLARATION RAISES A TRIABLE ISSUE WHETHER ARMSTRONG'S PURPORTED WAIVER OF HIS FIRST AMENDMENT RIGHTS WAS CONSTITUTIONAL

The Court's reliance on *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 is misplaced. If there had been no agreement between the parties, as testified to by Scientology's attorney Heller, that each side would maintain silence about the other, and Armstrong had voluntarily, knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he said anything back he could be sued, enjoined and jailed, the agreement perhaps could be enforced if Armstrong was competent to enter into such an agreement.[5] Since there is competent evidence from attorney Heller, for the purposes of summary judgment the Court cannot conclude that there is no triable issue whether or not Armstrong's purported waiver of his First Amendment rights was constitutional. Since, however, there is such a triable issue, summary judgment, particularly on an equitable cause of action for a permanent injunction silencing Armstrong is notably without adequate legal basis.

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[5] To think according to one's own muse is one's birthright. After Armstrong's initial litigation with Scientology which resulted in Judge Breckenridge's opinion, it is inconceivable that Armstrong would sell his right to engage in this most cherished American liberty. "Those who won

VII. THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI.

On October 10, 1995, in *In re Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164, the Court ordered "all direct testimony at trial shall be in the form of declarations." (Exhibit B to Greene Decl.) The subject matter of that proceeding is the same as in the instant proceeding (Exhibit C to Greene Decl.) Thus, the instant injunction precludes Armstrong from representing himself in that litigation because he cannot talk to people about Scientology in order to obtain declarations in his own defense. Such is a denial of Armstrong Fifth and Fourteenth Amendment rights to due process and to a fair trial, and his Sixth Amendment rights to counsel and to confrontation.

VIII. THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE

In an act of supreme irony, the court ordered all publicly filed documents in this case possessed by Mr. Greene, Armstrong's counsel "not be distributed to third parties." The public file

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our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative force should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form." (*Whitney v. California* 274 US 357, 375-376) in this case has been open for public review for almost 4 years as it should be. In Armstrong's own prior litigation, the Court of Appeal held

> "there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records non public. [Citation.] To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public ... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as Craemer, supra, and Rosato v. Superior Court (1975) 51 Cal.App.3d 190 ..., which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but, 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. ... [¶] If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum access to proceedings and records of judicial tribunals. Thus, in Sheppard v. Maxwell (1966) 384 U.S. 333, 350, the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (In re Shortridge (1893) 99 Cal. 526, 530) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records ...."

Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068.

There is simply no basis for this Court to order Armstrong's counsel to become subject to Armstrong's agreement. He has written all the legal arguments in this case. He has represented numerous other former Scientologists from whom he has obtained many Scientology materials and in the course of whose representation he has obtained copies of all documents filed in the instant litigation.

IX. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED: November 2, 1995

HUB LAW OFFICES

By: ______________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. On October 17, 1995, this Court's permanent injunction was filed herein and notice thereof was served by mail on October 18, 1995.

4. The instant motion is brought because the Court cut me off and prevent me from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous.

5. In *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is attached hereto as Exhibit B. Attached hereto as Exhibit C is a true and correct copy of Armstrong's answer in said litigation.

Pursuant to the laws of the State of California and under penalty of perjury I hereby declare that the foregoing is true and correct and that this declaration is executed on November 2, 1995 at San Anselmo, California.

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
~~235 Montgomery Street, Suite 450~~ 115 Sansome St., Suite #400
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
~~Bowles &~~ Moxon & Bartilson
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[]	(Personal Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
[X]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
[X]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 2, 1995

COPY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

BEFORE THE HONORABLE GARY W. THOMAS

--oOo--

CHURCH OF SCIENTOLOGY INTERNATIONAL, PLAINTIFF, VS. GERALD ARMSTRONG, ET AL., DEFENDANTS.	NO. 157680

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

FRIDAY, OCTOBER 6, 1995

APPEARANCES:

FOR THE PLAINTIFF:	ANDREW H. WILSON WILSON, RYAN & CAMPILONGO 115 SANSOME STREET FOURTH FLOOR SAN FRANCISCO, CA 94104
	LAURIE J. BARTILSON MOXON & BARTILSON 6255 SUNSET BOULEVARD SUITE 2000 HOLLYWOOD, CA 90028
FOR THE DEFENDANTS:	FORD GREENE 711 SIR FRANCIS DRAKE BOULEVARD SAN ANSELMO, CA 94960

REPORTED BY:
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

--oOo--

FRIDAY, OCTOBER 6, 1995 MORNING SESSION

PROCEEDINGS

--OOO--

THE COURT: WE DO HAVE THE CHURCH OF SCIENTOLOGY VERSUS GERALD ARMSTRONG.

MR. WILSON: GOOD MORNING, YOUR HONOR. ANDREW WILSON AND LAURIE BARTILSON ON BEHALF OF PLAINTIFF AND MOVING PARTY, THE CHURCH OF SCIENTOLOGY.

MR. GREENE: AND FORD GREENE ON BEHALF OF DEFENDANT, GERALD ARMSTRONG. IT WAS AT MY REQUEST THAT THIS HEARING IS BEING HELD.

THE COURT: YES. MR. GREENE, WHAT DO YOU HAVE TO SAY?

MR. GREENE: FIRST, YOUR HONOR, WITH RESPECT TO YOUR TENTATIVE RULING, I WANT TO DIRECT MY ARGUMENT TO YOUR HOLDING THAT THE FACTS SUBMITTED BY ARMSTRONG DO NOT ESTABLISH A MUTUAL CONFIDENTIALITY REQUIREMENT.

THE INTERPRETATION OF THE COURT OF THE SETTLEMENT AGREEMENT AS REFLECTED BY THE TENTATIVE RULING WOULD HAVE THE RESULT THAT SCIENTOLOGY COULD PUBLICLY ACCUSE MR. ARMSTRONG OF BEING A LIAR, A PERJUROR AND AN AGENT PROVOCATEUR OF THE FEDERAL GOVERNMENT, AND THAT IF ARMSTRONG TOOK ANY ACTION IN RESPONSE THAT THE RESULT WOULD BE THAT HE WOULD VIOLATE THE PROPOSED PERMANENT INJUNCTION AND WOULD BE SUBJECT TO BEING JAILED FOR CONTEMPT OF A COURT ORDER.

WHAT THE COURT HAS MISSED IN THE TENTATIVE RULING IS THE EVIDENCE THAT ARMSTRONG HAS SUBMITTED FROM

SCIENTOLOGY'S OWN COUNSEL, LAWRENCE HELLER, WHO THE COURT WILL RECALL WAS THE LAWYER WHO WAS PRESENT AT THE SIGNING OF THE SETTLEMENT AGREEMENT, AND HELLER'S OWN SWORN TESTIMONY AS SET FORTH IN SEPARATE FACTS 101 AND 102, WHICH THE COURT DID NOT ADDRESS AND DID NOT INCLUDE IN THE TENTATIVE RULING, STATES THAT THE CONFIDENTIALITY PROVISIONS WERE MUTUAL, THAT THEY WERE INSISTED UPON BY ALL PARTIES, AND THAT THEY PERTAINED NOT ONLY TO ANY INFORMATION THAT THE FORMER SCIENTOLOGY OFFICIAL POSSESSED WITH RESPECT TO THAT ORGANIZATION, BUT IT ALSO PERTAINED -- THE CONFIDENTIALITY PROVISION PERTAINED WITH RESPECT TO INFORMATION HELD BY SCIENTOLOGY AS TO ITS FORMER PARISHIONER OR FORMER OFFICIAL.

THAT SINGLE PIECE OF EVIDENCE IS SUFFICIENT UNDER THE CIRCUMSTANCES AND WITH RESPECT TO A 437(C) MOTION TO RAISE A TRIABLE ISSUE OF FACT.

WHAT THE COURT HAS DONE BASED ON THE TENTATIVE RULING HAS BEEN SOLELY TO BASE ITS ANALYSIS ON THE FOUR CORNERS OF THE DOCUMENT AND HAS NOT LOOKED AT ALL TO WHAT THE CIRCUMSTANCES WERE WHICH SURROUNDED THE PARTIES ENTERING INTO THE AGREEMENT, AND ALSO HAS NOT LOOKED AT THE CONDUCT OF THE PARTIES SUBSEQUENT TO THE AGREEMENT, AND THE AUTHORITY WITH RESPECT TO SUBSEQUENT CONDUCT IS -- THAT IS AUTOMOBILE SALES VERSUS EAST BAY MOTOR CAR DEALERS, 10 CAL.APP.3RD 419.

BASICALLY WHAT THAT TALKS ABOUT IS EVEN IF THE LANGUAGE IN A PARTICULAR AGREEMENT APPEARS ON ITS FACE CLEAR, WHICH WE --

THE COURT: NOW, MR. GREENE, THE STATEMENT BY

ARMSTRONG IN HIS DECLARATION, FACT ONE-H, SAYING MY CAREFUL WEIGHING OF MY OPTIONS, THIS IS HIS WORDS, IN FACT REFLECTS THE DURESS I WAS UNDER TO SIGN AND IS NOT REFLECTIVE OF AN ABSENCE OF DURESS --

MR. GREENE: THAT'S A DIFFERENT ARGUMENT.

THE COURT: -- DOUBLE SPEAK --

MR. GREENE: THAT'S A DIFFERENT ARGUMENT. I'M NOT ADDRESSING MYSELF TO THE DURESS ARGUMENT. I'M NOT ADDRESSING MYSELF TO THE ARGUMENT OF ALL OF THE KINDS OF CONDUCT THAT ARMSTRONG --

THE COURT: CAREFUL WEIGHING OF OPTIONS --

MR. GREENE: I UNDERSTAND.

THE COURT: -- IS TO BE INCONSISTENT WITH THE ABSENCE OF THE FREE EXERCISE OF WILL.

MR. GREENE: THAT'S NOT MY ARGUMENT. I'M TALKING ABOUT THE MUTUALITY, BECAUSE IF THE AGREEMENT ACCORDING TO ATTORNEY HELLER, WHO STATED UNDER PENALTY OF PERJURY REPRESENTING CSI WHO'S THE PARTY HERE IN A MOTION TO QUASH ARMSTRONG'S DEPOSITION TESTIMONY IN ANOTHER CASE BEFORE THIS LAWSUIT WAS EVER FILED, BEFORE THERE WAS ANY DISPUTE ABOUT THE SETTLEMENT AGREEMENT, HELLER SAYS THIS WAS MUTUAL, BOTH PARTIES SOUGHT IT.

BOTH PARTIES WERE TO MAINTAIN SILENCE AND NOT SAY A DOGGONE THING ABOUT ONE ANOTHER, AND THAT SPECIFIC EVIDENCE IS FOUND AT ARMSTRONG'S EVIDENCE ONE-AD. THAT'S A DECLARATION FROM THE VERY LAWYER WHO WAS PRESENT AT THE SIGNING OF THE SETTLEMENT AGREEMENT AND WHO ALSO SAYS I WAS PERSONALLY INVOLVED IN THE NEGOTIATIONS WHICH RESULTED IN

THIS SETTLEMENT AGREEMENT.

SO I'M NOT TALKING ABOUT DURESS. I'M NOT TALKING ABOUT FRAUD YET. I'M TALKING ABOUT MUTUALITY, AND THAT I'M TALKING ABOUT THE GOOSE AND GANDER RULE AND THAT WHAT WAS GOOD FOR --

THE COURT: THERE'S NO SUCH RULE NOW.

MR. GREENE: WELL, THAT'S WHAT YOUR TENTATIVE RULING --

THE COURT: THAT'S --

MR. GREENE: -- CLEARLY INDICATES.

THE COURT: -- OTHER PERSONS NOW.

MR. GREENE: JUDGE, YOU DO A VERY GOOD JOB OF ALMOST DERAILING ME.

THE POINT IS THAT THE COURT DIDN'T LOOK AND DIDN'T INCORPORATE THOSE FACTS AND THOSE FACTS ARE NOT DISPUTED. THAT'S NUMBER ONE. ACCORDING TO THE CASE LAW THAT THE SUBSEQUENT CONDUCT OF THE PARTIES TO AN AGREEMENT IS VERY RELIABLE EVIDENCE OF WHAT THEIR INTENTIONS WERE IN ENTERING INTO THE AGREEMENT, AND THAT'S WHAT THE COURT HAS TO DO FIRST IS TO ASCERTAIN WHAT WAS THE INTENTIONS OF THE PARTIES, AND IN ORDER TO DO THAT THE COURT'S GOT TO PUT ITSELF IN THE SHOES OF THE PARTIES AT THE TIME THE AGREEMENT WAS ENTERED INTO, AND THAT LEADS ME TO THE SECOND SUPPORTING ARGUMENT WITH RESPECT TO THE RECIPROCAL NATURE OF THE KEEP QUIET PROVISIONS, AND THAT'S BASED ON CIVIL CODE SECTION 1647.

THE COURT: WELL, IS THERE SOMETHING IN THE CONTRACT THAT'S SO DIFFICULT TO EXPLAIN THAT HAS TO BE

EXPLAINED BY ACTIONS?

MR. GREENE: YES.

THE COURT: WHAT IS IT?

MR. GREENE: THERE IS.

THE COURT: BASICALLY KEEP YOUR MOUTH SHUT. WE GAVE YOU $800,000 DOLLARS.

MR. GREENE: AH, BUT SEE, THAT'S -- I KNOW THAT, JUDGE, AND THAT'S BEEN THE STICKING POINT IN MY PERCEPTION OF YOUR VIEW OF ARMSTRONG AND THIS CASE ALL THE WAY ALONG. HE GOT $800,000 BUCKS SO HE DOGGONE WILL -- BETTER KEEP HIS MOUTH SHUT.

THE COURT: AND IT'S IN THE AGREEMENT. IF YOU OPEN YOUR MOUTH, YOU HAVE TO PAY BACK $50,000 EVERY TIME.

MR. GREENE: BUT -- WELL, THAT'S -- YET THE LIQUIDATED DAMAGES --

THE COURT: HE OPENED HIS MOUTH AND NOW THEY WANT $50,000 PER EACH TIME.

MR. GREENE: JUDGE --

THE COURT: THAT'S THE SUBJECT OF ACTS OF THE CHURCH.

MR. GREENE: JUDGE, THE ADDITIONAL -- WHAT THE COURT DIDN'T DO AND THE AUTHORITY IS PG&E VERSUS G.W. THOMAS GRANGE --

THE COURT: YES, NO RELATION TO ME, ALTHOUGH I LIKED SEEING THAT IN THE STREETS OF SAN FRANCISCO YEARS AGO.

MR. GREENE: -- 69 CAL.2D, 33, DISCUSSES --

THE COURT: I ASKED MY FATHER, AND HE ADVISED ME I WASN'T NAMED AFTER HIM EITHER.

MR. GREENE: -- DISCUSSES THAT THE COURT NEEDS TO LOOK AT THE OBJECT NATURE AND SUBJECT MATTER OF THE CONTRACT SO THAT IT CAN PLACE ITSELF IN THE POSITION OF THE PARTIES. AND WHAT IS BEFORE THE COURT IS THAT AS OF DECEMBER 6TH, 1986, ARMSTRONG HAD BEEN JUDICIALLY CREDITED BY JUDGE BRECKENRIDGE (SIC) AS BEING TRUTHFUL AND AS BEING ACCURATE.

SCIENTOLOGY IN THE SAME DECISION HAD BEEN JUDICIALLY FOUND TO BE FULLY CAPABLE OF INTIMIDATION OR OTHER PHYSICAL OR PSYCHOLOGICAL ABUSE IF IT SOUGHT -- IF IT LED TO THE ENDS THAT THEY SOUGHT. JUDGE BRECKENRIDGE (SIC) ALSO --

THE COURT: NOW, THE OTHER SIDE SAYS IN ESSENCE IF ONE ACCEPTS YOUR ARGUMENT, ONE IS FACED WITH THE UNESCAPABLE CONCLUSION, YOUR CLIENT, HE MADE A PROMISE WITHOUT THE INTENTION OF PERFORMING IT.

MR. GREENE: SEE, THE PROBLEM IS, JUDGE, THAT ARMSTRONG --

TTHE COURT: THEY DID PERFORM, THE OTHER SIDE, BECAUSE THEY GAVE THE $800,000.

MR. GREENE: THE PROBLEM WITH THAT ARGUMENT AND THAT VIEW IS THAT IT OCCLUDES ANY REFERENCE TO THE FACT THAT ARMSTRONG AT THE TIME OF THIS SETTLEMENT AGREEMENT HAD A PENDING CROSS-COMPLAINT AND THAT CROSS-COMPLAINT INCLUDED BEING RUN OVER BY A CAR DRIVEN BY AGENTS OF SCIENTOLOGY, INVOLVED IN FREEWAY ACCIDENTS IN VEHICLES DRIVEN BY SCIENTOLOGY, SURVEILED, SPIED ON, AND HARASSED. IN LESS THAN FIVE MONTHS PRIOR TO THE POINT THAT THIS CASE -- THAT THE SETTLEMENT AGREEMENT WAS ENTERED INTO AND ARMSTRONG

AGREED TO DISMISS HIS CROSS-COMPLAINT THAT WAS BASED ON CONDUCT OF THAT SORT, AN L.A. COUNTY JURY HAD AWARDED $30 MILLION DOLLARS ON BEHALF OF LARRY WASHORN (SIC) ON BEHALF OF SCIENTOLOGY.

IT'S NOT THAT ARMSTRONG WAS PAID $800,000 DOLLARS IN ORDER TO KEEP HIS MOUTH SHUT. HE WAS PAID $800,000 DOLLARS TO DISMISS HIS CROSS-COMPLAINT, AND IT WAS RECIPROCALLY AGREED BETWEEN SCIENTOLOGY AND ARMSTRONG THAT BOTH OF THEM WOULD KEEP THEIR MOUTHS SHUT, AND WHEN SCIENTOLOGY DIDN'T, WHEN SCIENTOLOGY WAS OUT IN PUBLIC AND IN COURT STAYING ARMSTRONG'S A LIAR, ARMSTRONG'S A PERJUROR, ARMSTRONG'S A PROVOCATEUR, WAS INVOLVED IN SOME GOVERNMENTAL CONSPIRACY TO TRY TO TAKE OVER THE CHURCH OF SCIENTOLOGY, THEN AT THAT POINT, THE REQUIREMENT FOR HIM TO CONTINUE TO ADHERE TO THE SILENCE PROVISIONS AS THEY PERTAINED TO HIM NO LONGER EXISTED.

SO IT'S NOT NEARLY SO SIMPLE THAT GERALD ARMSTRONG WAS JUST SORT OF OUT IN LIFE AND ACCEPTED ALMOST A MILLION DOLLARS TO KEEP HIS MOUTH SHUT. HE ACCEPTED -- AND YOU LOOK ALSO, JUDGE, AT SCIENTOLOGY'S OWN EVIDENCE WHICH IS THEIR OWN EVIDENCE AT EXHIBIT ONE-C AT PAGES FOUR AND FIVE, AND THAT WAS THE VALUATION OF ALL OF MICHAEL FLYNN'S CLIENTS, SOME TWENTY CLIENTS THAT WERE ENGAGED IN THIS GLOBAL SETTLEMENT ALL OF WHICH --

THE COURT: NOW, MR. GREENE, OF COURSE, THE PAPERS SUBMITTED HAS THE LOS ANGELES SUPERIOR COURT ORDER. YOU'VE REFERRED TO LOS ANGELES AND WHAT'S TAKEN PLACE THERE. THE ORDER SAYS, THE QUOTE IS, THE AGREEMENT TERMS ARE CLEAR

AND UNAMBIGUOUS. THE CROSS-COMPLAINANT UNDERSTOOD, THAT'S YOUR CLIENT, UNDERSTOOD THE TERMS AND SIGNED IT. THE DUTIES, OBJECTIONS, OBLIGATIONS OF AGREEMENT ARE CLEARLY STATED. MUTUALITY AND RECIPROCAL DUTIES CANNOT BE READ INTO THE UNAMBIGUOUS TERMS OF THE AGREEMENT. THERE ARE NO PROVISIONS IN THE AGREEMENT PROHIBITING THE CROSS-DEFENDANT FROM REFERRING TO CROSS-COMPLAINANT WITH THE PRESS OR IN LEGAL PLEADINGS OR DECLARATIONS.

MR. GREENE: WELL, JUDGE, IT'S NOT REALLY FAIR FOR TO YOU RELY ON THAT, BECAUSE A GRANT OF A MOTION FOR PRELIMINARY INJUNCTION --

THE COURT: WELL, NOW, I AGREE THAT THE RULING IS NOT THE LAW OF THE CASE.

MR. GREENE: OKAY. YOU ALSO HAVE ANOTHER JUDGE FROM THE SAME COURT SAYING THAT THIS IS THE MOST AMBIGUOUS ONE-SIDED UNFAIR AGREEMENT HE'D EVER SEEN, AND IF IT HAD BEEN SUBMITTED TO HIM HE WOULDN'T HAVE -- OR TO JUDGE BRECKENRIDGE (SIC) THE ORIGINAL JUDGE WHO PRESIDED OVER THE TRIAL WHERE SCIENTOLOGY ORIGINALLY SUED ARMSTRONG, HE WOULDN'T HAVE ENFORCED ANY OF IT.

SO WE CERTAINLY HAVE ACCURACIES IN THE EYE OF THE BEHOLDER, AND JUST BECAUSE ONE JUDGE SAYS THAT THIS IS UNAMBIGUOUS DOESN'T MEAN ANOTHER JUDGE IS GOING TO DO IT, AND YOU HAVE TO INDEPENDENTLY DECIDE, AND BASED ON YOUR TENTATIVE RULING, YOU DIDN'T LOOK AT LAWRENCE HELLER'S DECLARATION WHERE HE SAYS UNDER OATH REPRESENTING CSI THAT IT WAS A MUTUAL PROVISION, AND THAT'S WHAT IS THE SINGLE MOST GLARING OMISSION, WITH ALL DUE RESPECT, IN YOUR

TENTATIVE RULING, IS THAT YOU DON'T TAKE THAT INTO YOUR EVALUATION AT ALL. YOU LOOK AT THE FOUR CORNERS, AND YOU SAY THAT PROVISION SEVEN-I, THE CLEAN SLATE PROVISION, ONLY APPLIES IF THERE'S LITIGATION AMONG THE PARTIES SO THERE'S NO VIOLATION WITH RESPECT TO THAT ON SCIENTOLOGY'S SIDE, AND THEN WITH RESPECT TO 18-D, DON'T TELL ANYBODY ABOUT THE EXISTENCE OF THIS SETTLEMENT AGREEMENT, THAT WASN'T VIOLATED EITHER.

I MEAN ARMSTRONG'S PUT IN THE POSITION WHERE HE FINDS OUT THAT SCIENTOLOGY IS ACTIVELY CONDUCTING AN APPEAL IN HIS OWN CASE THAT HE BY THIS AGREEMENT IS PROHIBITED FROM OPPOSING, AND HE GOES TO THE COURT OF APPEAL AND HE SAYS COURT OF APPEAL, THIS IS THE AGREEMENT, I'M GIVING IT TO YOU UNDER SEAL, IT SAYS THAT I CAN'T PARTICIPATE IN MY OWN APPEAL, BUT I WANT TO ANYWAY. THE COURT OF APPEAL SAYS YES, YOU CAN. THAT IS NOT CLEAR.

THAT'S IN THE RECORD HERE. THAT WAS NOT CONSIDERED BY THE COURT, AND FOR THE PURPOSES OF SUMMARY JUDGMENT IT'S TOO SOON AND IT'S TOO FAST, BECAUSE IT'S NOT SO CLEAR CUT. AND JUDGE, GERHARDT (SIC) WHEN SCIENTOLOGY FIRST SOUGHT TO ENFORCE THIS AGREEMENT UNDER THE RUBRIC OF THE ORIGINAL SCIENTOLOGY LITIGATION, IT'S THAT ON THE RECORD AND IT'S IN EVIDENCE BEFORE THE COURT, HE SAID THIS AGREEMENT --

THE COURT: YES, YOU'VE ARGUED THAT FOR A LONG TIME NOW. SOMETHING YOU WANT TO SAY IN RESPONSE?

MR. WILSON: VERY BRIEFLY. WHAT'S REALLY HAPPENED HERE IS THAT THERE HAVE BEEN SEVERAL COURTS THAT

HAVE APPLIED THE GANDER RULE THAT TOOK A GANDER AT THE AGREEMENT, REALIZED IT WASN'T AMBIGUOUS, AND HELD THAT IT WAS ENFORCEABLE, HELD THAT THERE WAS NO SUCH MUTUALITY, THAT THE CONFIDENTIALITY PROVISIONS WENT ONE WAY, JUDGE HOHIGIN (SIC) AWARDED US A PRELIMINARY INJUNCTION. THAT WAS AFFIRMED BY THE COURT OF APPEAL. JUDGE HORSICKS (SIC) FROM LOS ANGELES GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF ACTION. YOU GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF ACTION PREVIOUSLY IN, I BELIEVE, DECEMBER, AND NOW YOU GRANTED SUMMARY JUDGMENT AGAIN WITH THE AGREEMENT IN PROPERLY DECIDING THAT YOU CAN LOOK AT THE FOUR CORNERS AND YOU CAN SEE THAT THERE'S NO SUCH MUTUALITY PROVISION.

AS FAR AS THE HELLER DECLARATION IS CONCERNED, MR. GREENE MISREPRESENTS WHAT'S IN THERE. IT DOESN'T SAY THAT BOTH PARTIES WANTED THE MUTUALITY OF THE CONFIDENTIALITY.

I THINK THAT THIS MATTER HAS BEEN ARGUED ENOUGH, AND I REALLY DON'T THINK IT NEEDS ANY FURTHER ARGUMENT.

MR. GREENE: I'VE GOT HELLER'S PAPERS RIGHT HERE IF THE COURT WANTS TO LOOK AT EXACTLY WHAT THEY SAY, AND I'M SORRY, MR. WILSON, YOU'RE WRONG. WITH RESPECT TO THE COURT OF APPEALS REVIEW OF THE PRELIMINARY INJUNCTION, THE COURT OF APPEAL SPECIFICALLY AND EXPRESSLY WITHHELD ANY DETERMINATION OF THE ENFORCEABILITY OF THE AGREEMENT. IT ONLY LOOKED AT THE INJUNCTION. IT DID NOT EVALUATE AND MAKE A JUDICIAL DETERMINATION WITH RESPECT TO THAT.

SO I WILL ALSO -- IN ARMSTRONG CLEARLY SETS OUT-- JUDGE BRECKENRIDGE (SIC) IN HIS DECISION SAID ARMSTRONG AND

HIS LAWYER WERE FREE TO TALK ABOUT SCIENTOLOGY. THEY TRIED TO SHUT HIM UP BEFORE, AND HE SAID THEY'RE FREE TO TALK ABOUT ANY OF ARMSTRONG'S EXPERIENCES, ANY OF THE DOCUMENTS THAT WERE IN EVIDENCE, THEY -- THERE'S NO RESTRICTION.

SO WHY IN THE WORLD WOULD ARMSTRONG AT THAT POINT IN HIS LIFE AFTER HAVING LITIGATED AGAINST SCIENTOLOGY FOR FIVE YEARS AND THROUGH A THIRTY-DAY COURT TRIAL, COURT TRIAL -- IT WASN'T A JURY TRIAL, WAS A COURT TRIAL -- WHERE THE JUDGE SAYS YOU CAN SAY WHATEVER YOU WANT ABOUT YOUR FORMER RELIGION, YOU CAN SAY WHATEVER YOU WANT TO, AND HE HAD A CROSS-COMPLAINT THAT BY ALL INTENTS AND PURPOSES LOOKED LIKE IT WAS A BELL RINGER, IT WAS SET TO GO TO TRIAL WITHIN THREE MONTHS, AND HE GETS $800,000 BUCKS. HE DIDN'T GET $800,000 BUCKS JUST TO KEEP HIS MOUTH SHUT, GO AWAY INTO THE FIRMAMENT AND SCIENTOLOGY CAN SAY YOU'RE A LIAR, YOU'RE A PERJUROR, YOU'RE THIS AND YOU'RE THAT, AND IF YOU COME OUT OF THE FIRMAMENT, WE'RE GOING TO HAMMER YOU AND GET AN INJUNCTION AND PUT YOU IN JAIL IF YOU OPEN YOUR MOUTH AGAIN.

HE DIDN'T AGREE TO THAT, AND IT'S NOT REASONABLE UNDER THE CIRCUMSTANCES TO CONCLUDE THAT HE HAD THAT INTENT WHEN HE ENTERED INTO THE AGREEMENT, AND SCIENTOLOGY'S OWN EVIDENCE, THEIR OWN EVIDENCE WHICH IS --

THE COURT: WELL, REALISTICALLY, MR. GREENE, FOR THE ARMSTRONG POSITION, THEY SAY THERE'S A MUTUAL CONFIDENTIALITY REQUIREMENT. HE POINTS TO HIS BELIEFS, THE PURPORTED BELIEFS OF HIS ATTORNEY, AND WE HAVE THE STATEMENT MADE BY AN ATTORNEY FOR ONE OF THE SCIENTOLOGY ORGANIZATIONS.

MR. GREENE: THE PLAINTIFF HERE --

THE COURT: YES, BUT THE FACTS, THOSE FACTS ARE NOT RELEVANT, AND WHEN ONE READS WITKIN, AND YOU CAN READ IT, ONE WITKIN SUMMARY OF CALIFORNIA LAW, IT'S IN SECTION 84, PAGE 617, THE RULES OF INTERPRETATION OF WRITTEN CONTRACTS ARE FOR THE PURPOSE OF ASCERTAINING THE MEANING OF THE WORDS USED THEREIN. EVIDENCE CANNOT BE ADMITTED TO SHOW INTENTION INDEPENDENT OF THE INSTRUMENT. THE WORDS ARE CLEAR.

MR. GREENE: WELL, THE PROBLEM IS, JUDGE, WHEN YOU LOOK AT --

THE COURT: SO WE HAVE -- THE FACT IS THAT ARMSTRONG HASN'T RAISED A TRIABLE ISSUE AS TO WHETHER THE PLAINTIFF BREACHED THE TERM OF THE SETTLEMENT AGREEMENT. THE OTHER ARGUMENTS WITH REGARD TO OBSTRUCTION OF JUSTICE AND HIS RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT, ET CETERA, WELL, THAT ITT CASE HAD DEALT WITH THAT.

MR. GREENE: NO, IT DIDN'T BECAUSE THE ITT CASE --

THE COURT: IT'S POSSIBLE --

MR. GREENE: IT SAYS POSSIBLE, BUT FOR A WAIVER TO BE EFFECTIVE --

THE COURT: IT'S POSSIBLE TO WAIVE EVEN FIRST AMENDMENT FREE SPEECH --

MR. GREENE: FREE SPEECH RIGHTS.

THE COURT: -- BY CONTRACT.

MR. GREENE: CORRECT. IT SAYS THAT, BUT IT ALSO SAYS THAT IN ORDER FOR THE WAIVER TO BE EFFECTIVE, IT'S

ESSENTIALLY THE SAME STANDARD AS WHEN YOU ENTERED A GUILTY PLEA IN A CRIMINAL CASE. IT'S GOT TO BE KNOWING, INTELLIGENT, AND VOLUNTARY, AND THERE'S ABSOLUTELY NO EVIDENCE HERE THAT SUCH WAS A CASE, PARTICULARLY IN LIGHT OF HELLER'S DECLARATION, SCIENTOLOGY'S OWN COUNSEL, SAYS BOTH PARTIES WERE SUBJECT TO KEEPING THEIR MOUTH SHUT ABOUT THE OTHERS.

MS. BARTILSON: EXCUSE ME, YOUR HONOR, BUT I HAVE TO JUST DIFFER WITH MR. GREENE'S CHARACTERIZATION OF NO EVIDENCE. THERE IS A VIDEOTAPE OF THE SIGNING OF THE AGREEMENT SHOWING MR. ARMSTRONG SIGNING IT VOLUNTARILY. MR. ARMSTRONG HAS PUT IN DECLARATION AFTER DECLARATION SAYING HE DISCUSSED IT WITH MULTIPLE ATTORNEYS BEFORE HE SIGNED IT. I DON'T THINK THAT THAT'S -- THERE'S EVEN ANY QUESTION OF FACT AS TO WHETHER OR NOT HE ENTERED INTO IT VOLUNTARILY WITH FULL KNOWINGNESS OF THE PROVISIONS.

THE COURT: THERE'S NO REASON TO CHANGE MY TENTATIVE RULING.

MR. GREENE: WELL, BEFORE YOU TELL ME I CAN'T TALK ANYMORE, I WANT TO KEEP --

THE COURT: WELL, THAT'S WHAT I'M SAYING.

MR. GREENE: I WANT TO GIVE YOU ANOTHER CASE, JUDGE, WITH RESPECT TO THEIR OBJECTIONS TO HEARSAY AND YOUR CHARACTERIZATION --

THE COURT: NO.

MR. GREENE: THE EXCEPTION --

THE COURT: NO.

MR. GREENE: -- IS 1241(A) CONTEMPORANEOUS

STATEMENT BY --

THE COURT: WE'LL GO ON TO BLACK POINT FOREST PROJECT --

MR. GREENE: JUDGE, ALSO --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: JUDGE --

THE COURT: YOUR MATTER'S OVER.

MR. GREENE -- WITH RESPECT TO --

THE COURT: I'VE GIVEN YOU MORE THAN TWENTY MINUTES. THIS IS A LAW AND MOTION MATTER. TIME IS UP.

MR. GREENE: I UNDERSTAND, JUDGE, BUT THE WAY THAT THIS PRELIMINARY INJUNCTION IS BROADER THAN THE LANGUAGE OF THE CONTRACT ITSELF. IT'S BROADER THAN THE LANGUAGE OF THE CONTRACT ITSELF.

THE COURT: BLACK POINT FOREST VERSUS THE CITY OF NOVATO.

MR. GREENE: AND ALSO IT'S -- AND IT'S WAY BROADER, AND IN ADDITION, IT TAKES MY FILE IN THIS CASE AND YOUR ORDER IS ALSO WRONG BECAUSE YOU'VE STRICKEN --

THE COURT: I'LL HAVE YOU TAKEN AWAY, MR. GREENE.

MR. GREENE: -- YOU'VE STRICKEN HIS EVIDENCE AND YOU'VE DENIED HIS ABILITY --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: -- TO EVEN APPEAL THIS --

THE COURT: YOU'RE INTERFERING WITH ANOTHER CASE.

MR. GREENE: -- GIVEN --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: THE BREADTH OF YOUR ORDER AND THE

EFFECT OF IT, JUDGE, IS THAT YOU'VE MADE IT IMPOSSIBLE FOR ARMSTRONG TO EFFECTIVELY APPEAL. THE INCORRECT DECISION THAT YOU'RE RENDERING NOW, BECAUSE YOU SAY THAT HIS EVIDENCE IS IRRELEVANT AND HAS TO BE STRICKEN --

THE COURT: EXCUSE ME. EXCUSE ME.

(WHEREUPON, PROCEEDINGS WERE CONCLUDED)

--000--

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

I, ELAINE PASSARIS, DO HEREBY CERTIFY THAT I AM A DULY CERTIFIED SHORTHAND REPORTER OF THE STATE OF CALIFORNIA, AND THAT AS SUCH REPORTER I ATTENDED THE HEARING OF THE FOREGOING CAUSE AND TOOK IN STENOTYPE THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER.

THAT I THEREAFTER CAUSED THE FOREGOING PROCEEDINGS OF SAID ACTION TO BE TRANSCRIBED BY COMPUTER UNDER MY DIRECTION, AND THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF SAID STENOTYPE SO TAKEN.

DATED: October 30, 1995

Elaine Passaris
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

8956

FILED

OCT. 10, 1995

KEENAN G. CASAL, Cler
U.S. BANKRUPTCY COURT-SANTA ROS

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG, No. 95-10911

Debtor.

10-11-95

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff,

v. A.P. No. 95-1164

GERALD ARMSTRONG,

Defendant.

ORDER REGARDING TRIAL TESTIMONY

It appearing necessary to an effective trial of this adversary proceeding, it is

ORDERED that all direct testimony at the trial shall be in the form of declarations. The declarations shall be filed with the court and a copy mailed to the other side at least seven days before trial. Each declarant shall be present in court at trial to be cross-examined. No exhibits or other papers of any kind may be attached to the declarations; all exhibits will be made part of the record only by motion at trial in the usual manner.

Dated: October 8, 1995

Alan Jaroslovsky
U.S. Bankruptcy Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: October 10, 1995

Deputy Clerk

GERALD ARMSTRONG
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960

WILSON, RYAN & CAMPILONGO
Andrew H. Wilson
115 Sansome Street
Fourth Floor
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Gerald Armstrong
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(415)456-8450
In Propria Persona

ORIGINAL FILED
ORDER FOR RELIEF
95 SEP 25 PM 4:01
KEENAN [illegible], CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
SANTA ROSA, CA.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG,

Debtor

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

Case No. **95-10911 aj**

Chapter 7

Adv. No. **95-1164**

GERALD ARMSTRONG'S
SECOND AMENDED ANSWER

INTRODUCTION

Plaintiff Scientology organization has been judicially declared paranoid and schizophrenic. Scientology's paranoia and schizophrenia are a reflection of its founder L. Ron Hubbard. Hubbard was judicially declared to be a pathological liar, greedy, lustful of power, vindictive, and aggressive against persons he perceived as disloyal or hostile. Out of his paranoia and schizophrenia, Hubbard concocted and adopted a philosophy and practice of opportunistic hatred as his way of dealing with persons so perceived. Out of his paranoia and schizophrenia

Hubbard targeted and labelled persons so perceived "suppressive persons," (or "SPs") and "enemies." At a certain point Hubbard called his philosophy and practice of opportunistic hatred, "fair game," and he formed an organization, which he called a "church," to carry out his "fair game" intentions, plans, programs, operations and orders. He used the resources and personnel of the Scientology organization to carry out antisocial and criminal acts against individuals and groups designated as "enemies." Hubbard's "fair game" policy, which has been several times judicially condemned, states: "ENEMY - SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without the discipline of the Scientologist. May be tricked, sued or lied to or destroyed." Out of his paranoia and schizophrenia Hubbard further instructed his "church" to use society's legal systems to harass and ruin perceived "SPs" or "enemies." It has been judicially declared that his Scientology organization has a history of violating and abusing its own members' civil rights, and harassing and abusing those persons not in the organization whom it perceives as enemies. It has been judicially declared that the Scientology organization is fully capable of intimidation or other physical or psychological abuse if it suits their ends. Hubbard and Scientology, while knowing that defendant Armstrong was neither an "SP" nor an "enemy," as said terms are used and defined in Scientology's policies, orders and other writings, so labelled him, and subjected him to "fair game" until Hubbard died in 1986. Scientology's new leader David Miscavige has continued its "fair game" doctrine until the present, and his Scientology organization continues to the present to label and target

Armstrong as an "SP," an "enemy," and "fair game." The instant complaint by Scientology is the product of Miscavige's and Scientology's paranoia and schizophrenia manifested in their "fair game" doctrine and attacks. Miscavige and Scientology have known throughout the time period covered by the matters herein of the judicial condemnation of "fair game." Miscavige and Scientology are harassing Armstrong with judicial enforcement of an illegal and evil contract, his signature on which they obtained by extortion, fraud and the abuse of his common decency and trust. From the time of signing of said contract to the present, Miscavige and Scientology have subjected Armstrong to a campaign of covert and overt character assassination (which Scientology calls "black propaganda"), stalking, threat, lies and litigation. Scientology has a reputation in its legal affairs for dirty tricks, threat, dishonesty, deception, attrition and overwhelm which is widely known and feared by this country's attorneys and by the media. Scientology also has a widely known reputation for using bullying and dishonest private investigators to harass perceived opponents pursuant to "fair game" and for shielding their aggressive and corrupt activities behind the work product privilege of corrupt attorneys. All of Armstrong's actions which Scientology claims are breaches of its "contract" were in logical, legal response to Miscavige's and Scientology's dangerous and damaging "fair game" activities. Armstrong's actions have all been justified and privileged, and Scientology has not been damaged in any way by his actions. The instant complaint is one part of Miscavige's and Scientology's program to misuse the legal system to harass and ruin Armstrong. Miscavige's and Scientology's misuse of the legal system is one front in their war on Armstrong, the purpose of which is his demise. This is not a purpose for which the legal system and the nation's courts may be used.

For the fleeting illusion of power and wealth Hubbard sold his soul to the world's dark force of evil. Out of his paranoia and schizophrenia Hubbard considered himself anti-Christ and devised an anti-Christian philosophy and organization to achieve his anti-Christian goals of world power and wealth. Armstrong is a Christian. Armstrong believes he has been called by God to bring His Light to Scientology's benighted and enslaved souls. Armstrong believes his experiences are God's and that he cannot be silenced by man's courts concerning his experiences or about Scientology's dark, secret and anti-Christian nature. Armstrong believes that Scientology is dangerous to himself, others, to wisdom, and to goodness itself, and that Scientology's dangerousness is reduced by bringing its dark, secret and anti-Christian nature to light, and by not succumbing to the threat and of its evil "fair game" doctrine.

HISTORY

Armstrong was in Scientology from 1969 through 1981. Throughout those years he believed Hubbard's and Scientology's public representations about their history, credentials, research, and benevolent intentions. Armstrong accepted Hubbard's and Scientology's guarantees of higher intelligence, greater freedom, increased abilities and elevated ethics that they made for their psychological processing, or "auditing." Armstrong gave Hubbard and Scientology his allegiance, support and life, which Hubbard and Scientology, out of their paranoia and schizophrenia, systematically and callously abused.

From 1971 through 1981 Armstrong was in the Sea Organization, one of the two administration and power arms through which Hubbard controlled Scientology around the world. The other power arm of Scientology that Hubbard used to maintain control was the Guardian's Office, headed by his wife Mary Sue Hubbard. Armstrong worked with Hubbard for four years on his ship, the "Apollo," and held the positions of public relations officer, legal officer and intelligence officer. Armstrong later was in charge of Hubbard's telex and mail traffic at a base in Florida, and then Hubbard's household staff at a base in southern California. Throughout his Sea Org experience Armstrong gained a knowledge of organization structure, function, control, finances, personnel, policies and operations. During 1980 and 1981 Armstrong assembled an archive of Hubbard's personal records, correspondence and writings of all kinds, and did the research for a Hubbard biography. Armstrong provided Hubbard's personal archive materials to non-Scientologist writer Omar V. Garrison who had been contracted to write the biography.

Through his study of Hubbard's archive, and the integration of his knowledge and experiences gained throughout his years in Scientology, Armstrong discovered and documented the fact that Hubbard and Scientology had systematically and callously lied in their public representations about their history, credentials, research, benevolent intentions, and guarantees for auditing. Armstrong discovered and documented the facts that Hubbard claimed to be a civil engineer and nuclear physicist who excelled is his university education; yet he had actually failed his few courses in physics and dropped out of university without completing his second year. Armstrong discovered and documented the facts that Hubbard claimed that it was a matter of medical record that he had twice been pronounced dead; yet no such incidents had happened beyond Hubbard's admitted nitrous oxide hallucination of his death during a tooth extraction. Armstrong discovered and documented the facts that Hubbard claimed that his naval service was glorious, that he had been crippled and blinded in action, and that he had cured himself at the war's end of his battle wounds with his new mental technology "Dianetics;" yet Hubbard's naval career was something different from glorious, he was not crippled nor blinded in action, he feigned his medical conditions to get out of the service and to obtain a disability pension, and, decades after he claimed to have cured himself and, to everyone's amazement, have been given a perfect score on a mental and physical tests, he continued to draw a disability pension for his feigned injuries.

Armstrong discovered that Hubbard lied about his family, including falsely denying his bigamous second marriage and the paternity of his second daughter. Armstrong discovered that Hubbard, while claiming to have been sent by the US Navy into a black magic ring to break it up, had actually been a participant in the black magic cult and its rituals, including a blood ritual. Armstrong discovered that Hubbard, while claiming to have based and developed Scientology on his pure scientific research, had actually based and developed it on his decision for, and use of, neo-satanic power, for which he had joined the black magic cult, then headed by the "great beast," Aleister Crowley.

Armstrong discovered that Hubbard's claims of altruistic and benevolent motives, that, e.g., he, his philosophy and organization were working to free mankind, were false. When starting Dianetics and Scientology Hubbard programmed himself with the command that all men were his slaves, and through the ensuing years treated them as such. Armstrong discovered that Hubbard was greedy, lustful of power, vindictive, and aggressive against persons he perceived as disloyal or hostile. Armstrong discovered that contrary to Hubbard's and Scientology's assertions that Hubbard received no money from Scientology and was paid less than an average staff member, Hubbard had control of all Scientology monies and bank accounts and had unilaterally transferred many millions of dollars to his own accounts.

Armstrong discovered that Hubbard's and Scientology's system of "ethics" and "justice" procedures, were neither ethical nor just, but was really a kangaroo court system which served Hubbard's purposes of maintaining ironfisted, dictatorial control, obliterating any criticism, and keeping staff members and Scientologists in fear and suppressed. Armstrong discovered that Hubbard's promise of an increase in intelligence quotient of one point per hour of auditing was false (Armstrong had by then had over one thousand hours) and that in fact the further one went on in Scientology the less intelligent one became. Armstrong discovered that contrary to Hubbard's and Scientology's promise of the sanctity and confidentiality of statements made by people being audited, these statements were not kept confidential but could be and were used by Hubbard and Scientology to control and harm the people if it served Hubbard's and Scientology's antisocial purpose.

Armstrong discovered that Hubbard's and Scientology's promise of higher ethical standards as a result of undergoing auditing and adherence to Scientology was false and that auditing and Scientology produced in the adherents who had risen to the apex of its organizational pyramid dishonesty, stupidity, antisocialness and aggressiveness. Armstrong discovered that contrary to Hubbard's and Scientology's assertion that auditing and other Scientology practices kept families together and improved marital relations, in fact they turned parents and their children against each other and broke families apart. Armstrong discovered that contrary to Hubbard's and Scientology's assertion that auditing made people sane and able, cured diseases such as cancer and guaranteed superior physical health, there was in fact an inordinate number of suicides and psychotic episodes among people who had been audited and all auditees were generally delusional. Scientologists were as sick and died of cancer and other diseases as readily as anyone else, and were generally unhealthy. Armstrong discovered that Hubbard himself was addicted to drugs, in poor physical health, and often pathologically sullen or enraged, and Armstrong knew that Hubbard and Scientology hid these conditions from the world. Armstrong discovered that rather than admitting the damage and failures of auditing Hubbard and Scientology attacked any critics and attacked the persons who had been damaged. Armstrong discovered that Hubbard had relabeled his "psychotherapy" a "religion" to avoid having to make good on his "scientific guarantees." Hubbard called this idea the "religion angle."

Armstrong discovered that Hubbard and Scientology consistently lied in judicial proceedings and required that their adherents lie for them, including lying about Hubbard's control of Scientology, his control of Scientology funds, his control of the Guardian's Office intelligence operations(11 GO staff, including Mary Sue Hubbard, were convicted of Federal crimes and sentenced to prison as a result of an FBI raid on Scientology's intelligence bureaus in 1977) organization structure, the organization's ability to communicate with Hubbard, their intentions, and neo-satanic origins, attitude and practices. Armstrong discovered that Hubbard and Scientology, rather than face the truth about their origins, attitude and practices, sought to subvert the justice system through dirty tricks, lies, threat, deception, attrition and overwhelm.

Armstrong discovered that he had been brainwashed by Hubbard and Scientology, and that Scientologists everywhere are subjected to the identical brainwashing. Armstrong discovered that he had been cruelly abused by Hubbard and Scientology, and that Scientologists everywhere are similarly abused. Armstrong discovered that Hubbard and Scientology uses a system of punishment, fear, control of language, control of information, control of environment, time and human contact, electronic-assisted interrogations, imprisonment, and control of thought, which is able to achieve complete dominion over the minds and lives of Scientologists to their detriment. It brings them to support, defend and give their lives to the very spiritless system which hates them and means them harm. Armstrong discovered that the truth concerning Hubbard's and Scientology's origins, history, actual intentions, practices, operations and efficacy was kept from Scientologists, and that anyone who sought to bring that truth to Scientologists was ruthlessly attacked.

When Armstrong sought while inside to have Scientology correct its lies and abuses he was threatened and attacked. He left Scientology and was declared an "SP" and became "fair game." Hubbard's and Scientology's black propaganda "SP Declare" on Armstrong falsely accused him of crimes and lying about Hubbard. Hubbard personally ordered that Armstrong be destroyed. Armstrong contacted Boston attorney Michael J. Flynn. Armstrong obtained documents from Garrison which he thought would be needed to defend himself, and he sent these to Flynn.

From 1982 through 1984 Scientology's "fair game" acts toward Armstrong included spying on him and his wife; hiring private investigators to spy on and harass them; having a private investigator assault Armstrong, and another hit him with a car and attempt to involve him in a freeway "accident;" suing him; attempting to have him falsely charged with theft; subjecting him to a black propaganda and stalking campaign. Armstrong filed a cross-complaint against Scientology for fraud and intentional infliction of emotional distress.

In 1984, following a thirty day trial in Los Angeles Superior Court, a decision was rendered by Judge Paul G. Breckenridge, Jr. in Armstrong's favor in Scientology's case from which his cross-complaint had been severed. This decision, which was affirmed on appeal in 1991, is attached hereto as Exhibit A.

After the 1984 trial through 1986 Scientology's "fair game" acts toward Armstrong included a Scientology private investigator threatening to murder him; filing false contempt of court charges against him; attempting to have the FBI charge him based on false information; attempting to have the Los Angeles District Attorney bring charges against him based on false information; culling and disseminating his statements made in auditing; paying agents to write false affidavits against him; using his friends to set him up in a covert intelligence operation; illegally videotaping him; attempting to entrap him in commission of a crime; subjecting him to further black propaganda, including international publications falsely accusing Armstrong of crimes against humanity.

Scientology also subjected attorney Flynn to years of "fair game," which included suing him or his office more than a dozen times; infiltrating his office; threatening his career and family; paying known criminals for declarations falsely accusing him of crimes; framing him with a crime; attempting his assassination; and subjecting him to an international stalking and black propaganda campaign.

In late 1986, out of desperation to get away from the threat of Scientology's "fair game" operations, Flynn agreed with Scientology to a "global settlement" of all of the cases in which he was then involved against the organization, including Armstrong's cross-complaint, then set for trial at the beginning of 1987. Flynn was to be paid a lump sum which he was to divide between his clients and himself. Armstrong agreed to a monetary figure with Flynn to settle his cross-complaint. Scientology and Flynn worked out and agreed to the language of the settlement documents before Armstrong, who was then working for Flynn, was shown any papers. Armstrong was flown from Boston to Los Angeles, and other Flynn clients were flown to Los Angeles for the settlement, before Armstrong saw the documents he was expected to sign, and was told by Flynn that Scientology would not change the documents. Armstrong was broken hearted when he read the settlement documents. He had not been involved in any negotiations or settlement discussions, and he felt ganged up on.

He protested to Flynn that it was impossible to live by the "settlement contract;" that he would not agree to the $50,000 per statement liquidated damages clause; that the contract was just more "fair game." Flynn stated to Armstrong in response to Armstrong's protest that the settlement contract "isn't worth the paper it's printed on;" that Armstrong couldn't "contract away [his] constitutional rights;" that "it's unenforceable." Flynn pointed out to Armstrong the clauses concerning Armstrong's dismissal of his cross-complaint and his release of Scientology up to that date; and Flynn told Armstrong, "That's what they're paying you for." Flynn said that all of his clients, some twenty people, were depending on Armstrong to sign; that most had already signed and if Armstrong didn't sign everyone would be subjected to more "fair game;" that Scientology had ruined Flynn's marriage and life and he had to get out of the litigation; that Scientology would continue to make Armstrong's life miserable. Flynn said that Scientology had promised to cease all "fair game" attacks on Armstrong and everyone else, and that the purpose of the "settlement contracts" was to give Scientology the opportunity they said they needed to "turn over a new leaf." In order to relieve everyone involved from the threat of "fair game," to give Scientology the opportunity they said they needed to reform, and because of his faith in God, and the confirmation by Flynn that the "contract" was unenforceable, Armstrong did go through the spectacle of a videotaped signing.

Following the settlement, and before Armstrong responded in any way, Scientology continued to subject him to "fair game," including filing affidavits accusing him of crimes and of being an agent provocateur of the United States government; publishing distorted versions of his Scientology history; using documents which Scientology had requested be sealed in the Armstrong case to attack him; distributing copies of edited versions of the illegal videotapes of Armstrong to the media internationally; and threatening him six times with being sued if he responded to any attacks. Scientology also continued to subject other people to "fair game," in violation of its promise through Flynn that it was ceasing all "fair game" activities.

Armstrong attempted to live by the spirit of settlement, and although deeply saddened and threatened by Scientology's continuing attacks had not responded, but had tried to live his life away from the Scientology "fair game" war. Armstrong wrote, drew, had remarkable ideas, and formed The Gerald Armstrong Corporation with wonderful hopes and great expectations. In late 1989, however, after a series of threats from Scientology lawyer Lawrence Heller following Armstrong's being served with a deposition subpoena in a case against the organization, Armstrong concluded that he had to do something to defend himself, and to correct what he saw as an obstruction of justice, which the "settlement contracts" and Scientology's enforcement thereof were working in the legal arena. Heller threatened Armstrong that if Armstrong testified about his knowledge of Hubbard and Scientology, even though Armstrong had been subpoenaed to testify, Scientology would consider such testimony a breach of the "contract" and would sue him. Armstrong researched his rights and responsibilities and concluded that he had a duty to oppose known obstruction of justice. Armstrong petitioned the California Court of Appeal to be able to file a response in the appeal Scientology had been able to maintain from the

Breckenridge decision. Armstrong's filings in the Court of Appeal in 1990 contain his declaration detailing Scientology's post-settlement torts and violations. The Court of Appeal granted Armstrong's petition, he filed a respondent's brief, and the Court affirmed Breckenridge. Following the California Supreme Court's denial of review, Scientology filed a motion in the Court of Appeal to seal the record on appeal. Armstrong opposed the motion, and the Court of Appeal denied it. The complete trial transcript, which contains ten days of Armstrong's testimony about his Scientology experiences up to 1984, is a public document.

In August, 1990 Armstrong was greatly moved by the buildup in the Middle East toward war, and the general condition of man. Armstrong prayed to God for guidance as to what he should do, and received the word of God to give away his worldly wealth. Armstrong gave his possessions to those whom he believed had a need for them as put in his heart by God, forgave debts owed to him, and determined to go where God would have him go and do what God would have him do; which he believed was to help where his help was asked for. For the next year God had Armstrong, inter alia, offer himself to resolve the Middle East conflict, do some house painting and carpentry work, deal with the pending appeal, attempt to correct Scientology's subversion of the legal system, agree to help the victims of Scientology who asked for his help, and offer himself to resolve the Scientology conflict in which he had been drawn by Scientology's attacks.

Scientology's "fair game" attacks on Armstrong following his responding in Scientology's appeal of the Breckenridge decision include, but are not limited to, secretly videotaping him; suing him four times; attempting to have him jailed for contempt of court based on Scientology's mischaracterization of his actions and manufactured charges; filing declarations in various courts containing false charges, and using the "settlement contract" to prevent him from responding or punish him for responding; using a paid agent to spread the false rumor that Armstrong has AIDS; disseminating to the media packs of black propaganda which provide Scientology's false version of Armstrong's experiences, including lies that he testified falsely at trial in 1984, that he has adopted a degraded lifestyle, that he is connected to a referral agency for kidnapping, that his defense in the 1984 trial was a sham and a fraud, that the Los Angeles Police Department authorized videotaping Armstrong, that he wanted to plant fabricated documents in Scientology files and tell the IRS to conduct a raid, that he wanted to plunder Scientology for his own financial gain, that he never intended to stick to the terms of the "settlement contract", that Armstrong's motives are money and power, that he was incompetent as a researcher, that he perjured himself about surrendering documents to the court, that he wanted to orchestrate a coup in which members of the US government would wrest control of Scientology; publishing black propaganda about Armstrong without stating its source which provide Scientology's false version of Armstrong's experiences including the lies that Armstrong was formerly a heavy drug pusher, that a Marin Independent Journal photo showed him in the nude, that he is psychotic and lives in a delusory world; charging falsely in a letter to the press that Armstrong had distinguished himself by posing naked in a newspaper; attempting to cause Armstrong trouble with the IRS by writing black propaganda letters about him; distributing packs of black propaganda which attack his lawyer, Ford Greene, and Judge Breckenridge.

Armstrong has worked with attorney Greene since August, 1991. Throughout that period Scientology has attempted by overt means through misuse of the courts and by covert means to prevent him from working with Greene and from defending himself. Scientology employed a covert operative, whom Scientology had infiltrated into Greene's office, to develop a black propaganda attack that Armstrong and Greene were involved in a homosexual relationship.

Throughout its legal attacks on Armstrong Scientology has proclaimed that with the "settlement contract" it sought peace. Scientology also interprets the "settlement contract" to mean that it can say whatever it wants about Armstrong, no matter how false, obnoxious or evil and that he may not respond. Scientology claims that if he does respond in any way he is liable for $50,000 in liquidated damages. Scientology, after much forum shopping, and much "fair game," was able to deceive one judge, who did not understand, into accepting its interpretation of the "settlement contract" and ruling against Armstrong. Scientology interpreted this judge's ruling to mean that Armstrong owed Scientology $100,000. Scientology at the same time intimidated Armstrong's attorney, Ford Greene, into getting out of the Armstrong case. Scientology had subjected Greene to years of "fair game" which included infiltrating a covert agent into his office to steal his records and cause trouble; hatching a plot with the covert agent to have Greene killed; having the agent execute false declarations about Greene;

filing five spurious bar complaints against Greene; operating at least two of Greene's clients as their own agents and paying them to execute false declarations against Greene and breach their contract with him. The claim by Scientology for $100,000, Armstrong's being without an attorney, without money, and without the resources and skills necessary to defend himself, brought Armstrong to file for bankruptcy. Scientology has seized the opportunity to file the instant complaint.

Throughout Scientology's legal attacks on Armstrong it has intimidated Flynn into not coming forward to assist Armstrong. Flynn is not only Armstrong's attorney, he is his good friend. Flynn says that the contract is evil and that Scientology is evil; and he wants to help Armstrong. Flynn says that he signed a contract with Scientology to not assist Armstrong, and, while acknowledging that his "contract" with Scientology is illegal, he says that he knows that his life will be ruined even more than it has been by Scientology if he comes forward to help.

Armstrong maintains that Scientology's interpretation of the "settlement contract" is unconscionable and unamerican, and should be opposed with all strength. Because there are dozens of these "contracts" among first hand witnesses to Scientology's criminal and tortious practices, and because of Scientology's "fair game" use of the "contract" against Armstrong, a terrible injustice is being abetted by our courts, which should be opposed with all strength. Armstrong also maintains that for one party to a "settlement contract," which is supposed to be essentially a peace accord, to be able to continue to shoot at the other party, who is wounded, has been disarmed and is not being allowed to defend himself in any way, is not peace at all but a satanic hunting trip. The "settlement contract" is a permit for hunting humans.

Armstrong was paid in settlement by Scientology for their years of psychological cruelty, threat and stalking. Scientology did not learn its lesson but continued its cruelty, threat and stalking of Armstrong, a person already psychologically hurt and altered beyond belief by the cruelty, threat and stalking Scientology promised to cease. Armstrong performed his part of the 1986 settlement; he dismissed his cross-complaint, released to Scientology all evidence from his case, removed himself from controversy, and gave Scientology the time and freedom it said it wanted to cease "fair game." Scientology, knowing that they had compromised and removed Armstrong's attorney, failed to perform their part of the settlement, but continued "fair game" against Armstrong, whom they had psychologically wounded and, they thought, rendered defenseless. Scientology, in their paranoia and schizophrenia, which are the inevitable product of the decision for and prolonged use of neo-satanic "power," failed to consider God, from Whom all healing of minds, defense and victory come.

In 1991 Armstrong became a Christian. Armstrong had, since leaving Scientology, come to believe he was guided by God, and he sought to be guided in all circumstances in which he found himself. Once its adherents become sufficiently brainwashed Scientology does not permit them to believe in God, labels and treats anyone who believes in God as "psychotic," and enforces the satanic idea that God is an "implant," a false idea installed by pain and electronics in man's mind to enslave him. Scientology also teaches that Jesus Christ, the whole Gospel story, and Heaven are implants designed to enslave man, and that only Scientology has the way to free mankind from the enslavement of Christianity or other religious beliefs.

Scientology promotes to Christians and non-Christians that it is compatible with Christianity, that it holds the Judeo-Christian Bible as a holy work, and that it has no argument with the belief that Jesus Christ was the Savior of Mankind and Son of God. Scientology has distributed promotional materials containing these representations to every member of Congress, to libraries, to the media, to educators, to judges, and to people of influence across this country. Scientology withholds from the public its actual enforced beliefs about God, Christ, Heaven and the Bible. Armstrong believes this is religious fraud, and dangerous to everyone lured into Scientology, those already held by its brainwashing system, and society itself. Armstrong also believes that Scientology's "creed" is a religious fraud because Scientology, under Hubbard's and Miscavige's control, has never acted in accord with it. Scientology systematically abuses its members civil rights, and seeks to remove by whatever means the same civil rights of its non-Scientologist enemies."

Scientology promotes actively and aggressively and uses the public postal system, public forums and public media for its promotions. Scientology uses big name celebrities in its promotions, such as John Travolta, Kirstie Alley, Ann Archer and Tom Cruise. Scientology does not permit any of its celebrities to make public their knowledge of Scientology's anti-Christian, anti-religious inner nature, its fraudulent promises and public lies, abuse of human beings, and dangers to families and children. Surveys done in the past two years by FACTNet, a cult victims advocacy organization has revealed that while vastly overstating its actual membership Scientology has had an inordinate number of suicides, unexplained deaths and psychotic episodes by people undergoing auditing. If any celebrity acknowledged these evils he or she would become "fair game."

Armstrong sees that Scientology uses its tax-exempt wealth to violate his and other civil rights. Armstrong believes that this is not a legal purpose and not a purpose for which tax-exempt funds can legally be used. Armstrong sees that Scientology tricks and extorts huge sums of money from people it gets in its system for something of no value. This money will be used to pay lawyers to attack the same people and those who sought to bring to light or curtail the abuse. Armstrong believes that Scientology obtained its tax-exempt status in 1993 by illegal means. Armstrong believes that the Internal Revenue Service and the United States government agencies responsible were derelict in their duties in granting such tax exempt status. Armstrong believes that Scientology's leadership is involved in white collar crime, including securities scams and extortion.

Scientology will not acknowledge that God works in people's lives. To do so would be a violation of policy, punishable in "ethics," and being labeled and treated as "psychotic." The attorney executing Scientology's complaint, Laurie Bartilson, is a Scientologist. She has executed several documents in the State case which contain false statements about Armstrong. She attempted through false statements to have him jailed for contempt of court. She is completely under the power of David Miscavige. The complaint is colored by her required hatred of Armstrong.

God in this litigation is pointing out gently that He is in charge, and that satan is a bad belief in which faith should not be put because faith in satan is always betrayed. The undeniable fact is that God led Armstrong through his whole life to here; and there is no evidence whatsoever with plaintiff or anyone else that He will not lead Armstrong from here on. Miscavige and Scientology seek through power to bring into belief the illusion that Armstrong is obsessed with Scientology in order to excuse their obsession with him. They are faced with an overwhelming mountain of uncontroverted evidence that Armstrong gave away his worldly assets because he was so guided by God, and for no reason connected with Miscavige, Scientology or Hubbard. Without a jot of evidence they seek to con the world into believing that Armstrong renounced his possessions to facilitate his intended breaches of their hunting permit. God has used Armstrong for His purposes through a time when Miscavige, Scientology and Hubbard declared Armstrong "fair game," and attacked him out of their paranoia and schizophrenia. They have done everything they could that they thought could be argued as being within the law to attack and hurt him, and to hurt others, some of whom have been sent to him because they were hurt. Armstrong's actions in helping anyone are religiously motivated and completely protected by this country's and state's constitutions. Armstrong's experiences in or out of Scientology are sacred and the expression thereof cannot be suppressed in violation of these constitutions.

GENERAL DENIAL

Armstrong generally denies the allegations in Scientology's complaint.

SPECIFIC DENIALS

Armstrong denies that he is indebted to Scientology in any amount or in any way whatsoever.

1. Armstrong denies that he has engaged in a pattern of fraud and deceit of any form or nature whatsoever at any time. Armstrong denies that whatever he has or has not done mandates that his bankruptcy petition be dismissed without discharge. Armstrong denies that he has any legal debt to Scientology; and denies that whatever he has or has not done mandates that the illegal debt Scientology claims he owes it be deemed nondischargeable. Armstrong denies that he lied to anyone by failing to include his ownership in The Gerald Armstrong Corporation as part of his Schedule B. When Armstrong reviewed the petition, which had been prepared by computer program, and before filing the petition, he wrote in "The Gerald Armstrong Corporation" at paragraph 16 of the Statement of Affairs. At the meeting of creditors, and before being asked any questions, Armstrong volunteered the information that he owned 80 percent of The Gerald Armstrong Corporation. Armstrong had simply missed the very tiny line among many other very tiny lines on the Schedule B at the time he filed the petition. Armstrong has never at any time concealed The Gerald Armstrong Corporation or his relation thereto or ownership thereof. Armstrong understands that Scientology does not have much of a sense of humor. Armstrong lacks the information necessary to be able to admit or deny that in 1993 he testified that the assets of The Gerald Armstrong Corporation were worth $1 billion. Armstrong did testify at the start of 1994 that The Gerald Armstrong Corporation's value was in the neighborhood of $15 trillion.

Armstrong lacks the information necessary to be able to admit or deny that in 1994 he admitted under oath that he owned 80% of the shares of the stock in the corporation, and was its president and sole employee. Armstrong denies that, second, while testifying at a meeting of creditors, he asserted that The Gerald Armstrong no longer possessed any assets having any commercial value. Armstrong denies that he at any time failed to satisfactorily explain anything he had been asked to explain if he had a satisfactory explanation to give. Armstrong denies that he disposed of not only the $1 billion in assets claimed by The Gerald Armstrong Corporation. The loss in value of The Gerald Armstrong Corporation's assets was a direct result of Scientology's evil intention and illegal "fair game" actions to destroy Armstrong's reputation, work and life. Armstrong denies that he failed to satisfactorily explain how he disposed of the $518,000 he received as proceeds of the settlement of his lawsuit against Scientology. Armstrong testified in detail in the State case, despite such interrogation by Scientology being irrelevant, unwarranted and an invasion of his and others' privacy, as to what he did with the proceeds of the settlement with Scientology. Armstrong denies that he received at least $15,000 in large increments in 1992 and 1993. Armstrong denies that $15,000 can be received in large increments; whereas, e.g., $15 trillion, can be received in large increments. Armstrong denies that he failed to satisfactorily explain how he disposed of $15,000. Armstrong asserts, however, that such information is irrelevant to this action, and he is not required to provide such information to Scientology or to anyone. Armstrong denies that whatever he has done or not done renders him ineligible for discharge pursuant to

11 U.S.C. sections 727(a)(4)(A) and (5). Armstrong denies that he admitted under oath that he entered into an agreement with Scientology that he intended to breach. Armstrong performed Scientology's evil contract until Scientology's own "fair game" actions necessitated his responses in self-defense and in defense of others among Scientology's "fair game" victims. Armstrong desired peace and acted peacefully toward Scientology for three years. Scientology, however, did not want peace, but continued to threaten, stalk and attack Armstrong. Armstrong denies that he has repeatedly and maliciously breached the "agreement" entered into with Scientology. Scientology agreed to cease "fair game," but thereafter repeatedly and maliciously "fair gamed" Armstrong. Armstrong denies that his responses to Scientology's "fair game" resulted in the debt to Scientology which Armstrong seeks to discharge. The "success" of Scientology's "fair game" against Armstrong's attorneys, witnesses and friends, and against judges and the justice system, resulted in the "debt." Armstrong denies that he owes Scientology anything. Armstrong denies that whatever he has done or not done renders the illegal debt Scientology seeks to "collect" nondischargeable pursuant to 11 U.S.C. sections 523(a)(2)and (6).

JURISDICTION

2. Armstrong lacks the information necessary to be able to admit or deny any of the averments in this paragraph.

3. Armstrong denies each and every averment in this paragraph.

PARTIES

4. Armstrong denies that plaintiff herein is a California non-profit religious corporation. Plaintiff is a single body of

all Scientologist adherents world wide, all bound by the will, intentions, policies and orders of David Miscavige. Every unit, division, post, position, branch, bureau, network, corporate entity, director, office, as, e.g., Office of Special Affairs, "church," or any named or unnamed part world wide of all of what can "legally" call itself Scientology, and that body of people who may "legally" call themselves Scientologists, are under the complete control and domination of David Miscavige. Scientology and Scientologists are used by Miscavige to carry out his personal desires, including actions against individuals which are illegal and not activities for which the monies of non-profit religious corporations may legally be used. Miscavige's "official" role is that of head of "Religious Technology Center," which, "officially," was given the trademarks of "Scientology" by L. Ron Hubbard. Miscavige decides what is "Scientology" and who can be a "Scientologist." Any claim by plaintiff that there is not a unity of control between the entity it presents as plaintiff, the other parts of Scientology, and all Scientologists anywhere, under David Miscavige, should be disregarded. The obtaining of the tax-exempt status for plaintiff's several parts in 1993 was accomplished by fraud, extortion and government complicity and/or dereliction of its duties to this country's citizens. Miscavige has publicly claimed that he personally was responsible for the obtaining of Scientology's tax-exempt status from the government.

5. Armstrong admits that he is an individual, but denies that he has been a resident of the City of San Anselmo, County of Marin, State of California at all times relevant herein. Armstrong became a resident of the City of San Anselmo on or

about August 15, 1991.

ANSWER TO GENERAL AVERMENTS

6. Armstrong denies that he owes any legal debt to Scientology. Armstrong admits that the State Action is Scientology v. Armstrong, Marin County Superior Court No. 157680. Armstrong denies that eleven claims against Armstrong for breach of contract remain to be adjudicated. There are, according to Scientology's interpretation of what constitutes a "breach," millions of "breaches" by Armstrong remaining to be adjudicated. Armstrong denies that he is liable to Scientology for an additional liability claimed of $1,750,000 plus attorney's fees and costs. The truth is Scientology is liable to Armstrong for attorney's fees and costs and for damages as a result of its illegal, tortious, and outrageous "fair game" acts against him. Armstrong denies that Scientology's hunger for a permanent injunction is to prohibit Armstrong from further breaching certain terms of the "contract." Scientology's efforts are a smoke screen to hide the fact, and delay the judicial finding, that the "contract" is illegal and evil. Scientology is seeking to prohibit Armstrong from living his life in peace, and is seeking to destroy him through its "fair game" use of the power of the courts.

7. Armstrong admits that he signed Scientology's "contract" in December, 1986. Armstrong admits that it settled his cross-complaint against Scientology, but denies that it settled the litigation between Scientology and Armstrong because Scientology never intended by its "contract" to have the litigation settle, nor acted in a way which would allow a settlement. Scientology used the "contract" as a contract on

Armstrong permitting it to continue to attack Armstrong and continue to subject him and its other targeted "enemies" to "fair game" with imagined impunity.

8. Armstrong denies that he had been actively pursuing a career as an anti-Scientology "expert" and paralegal. Armstrong is an expert in Scientology's "theology," fraud and its philosophy and practice of "fair game." Armstrong is a paralegal. Armstrong was forced into litigating against Scientology and working as a paralegal for a lawyer litigating against Scientology by its "fair game" attacks and threat to his life and loved ones. Armstrong denies that he ever agreed that he would not disclose his knowledge or experiences in Scientology. Armstrong knew that it was impossible to not disclose such knowledge and experiences, and that the "contract" calling for such psychological enslavement was evil and illegal. Armstrong's attorney, moreover, advised Armstrong that the "contract's" condition prohibiting such disclosure was not worth the paper it was printed on and unenforceable, and that Flynn had also advised Scientology of that fact. Armstrong admits that the "contract" provides that Armstrong is to pay Scientology $50,000 per utterance.

9. Armstrong admits that Scientology sued him in February 1992 to enforce its illegal "contract," and sought and obtained a preliminary injunction; but denies that the preliminary injunction enforced portions of the "contract." Los Angeles Superior Court Judge Ronald Sohigian rewrote a portion of the "contract," and it was this rewritten portion which was "enforced" by the preliminary injunction.

10. Armstrong admits that, and that he has testified that,

in August, 1990, in answer to his prayer to God seeking guidance concerning whatever God sought for him at the time of and in consideration of the Middle East crisis, and generally and man's condition, God put the idea in his mind and heart to give away what he had; i.e, those things the "world" and "Scientology" consider valuable. Armstrong denies that he transferred real property valued at $530,000 and at least $35,000 in cash to his friend and lawyer, Michael Walton. In 1988 through 1989 Armstrong participated as an investor in the purchase of a lot in Sleepy Hollow, California, and the building thereon of a nice spec house. In early 1990, Armstrong, for various reasons unrelated to Scientology, purchased the house himself, along with Michael Walton, who, Armstrong admits, was his friend and lawyer. Armstrong made a downpayment of approximately $130,000, and that was his actual equity in the property, which was itself valued at approximately $530,000 at that time. After the completion of the building of the house, Armstrong, who was then living in another house, which he sold to purchase the Sleepy Hollow house, received the series of threatening telephone calls from Scientology attorney Lawrence Heller which necessitated his becoming active again in his legal and extralegal defense (see History at 13:15-27, supra). At the time Armstrong and Walton moved into the house in May, 1990 Walton had agreed to represent Armstrong in the pending appeal from the Breckenridge decision. Armstrong then had a plan of living life in Sleepy Hollow, running, riding, writing, drawing and other things, such as picking up the world's trash, solving the economy issue, or zeroing in on the Unified Field. The August 2 invasion of Kuwait by Iraq and the immediate international crisis that followed, televised 24 hours a day in power and detail, greatly affected Armstrong. He admits that as the "world" and Scientology view life, he had already been greatly affected in everything by God, in whom he believed, with whom he communicated, and to whom he prayed and looked for guidance and the courage to do what he believed God called him to do. After being so guided by God, Armstrong merely transferred to Walton, who was already on title in the Sleepy Hollow house, his interest therein. Armstrong denies that he transferred at least $35,000 in cash to Walton. Armstrong had, at the time of his and Walton's purchase of the property, deposited an amount of cash into a joint checking account intended to cover house expenses and needs for one year. When Armstrong transferred his interest in the house to Walton, Walton assumed the house's loan payments, and all other expenses and needs thereafter. Armstrong, by leaving the approximately $35,000 in the joint bank account, was attempting to respect his agreement and arrangement with Walton, perform what he saw as a contract, and to ensure Walton had the wherewithal, no matter what happened to Armstrong, to survive in the house and embark on his career. Armstrong admits that in August, 1990 he forgave all debts owed to him by friends and family members, and gave away the remainder of his cash, some $1500.00. That cash was repaid to Armstrong in many ways since then. Armstrong denies that he asserted under oath that he received no valuable consideration for these transfers. Armstrong has asserted under oath, and now reasserts, that he received the treasures of God, beyond human wealth and understanding, for his small willingness to give away things which have no value. Armstrong denies that he has not produced any records of any of these transactions, other than the transfer of the real property to Walton. Armstrong produced to Scientology in the State Action each and every document, totalling hundreds of pages, reflecting or concerning in any way each and every one of these transactions.

11. Armstrong called his company The Gerald Armstrong Corporation, or "TGAC," or "Teegeeack."

12. Armstrong admits the averments of this paragraph, except he denies that The Gerald Armstrong Corporation, or TGAC or Teegeeack was ever known as GAC. Armstrong admits that The Gerald Armstrong Corporation had at one time considerable worldly value.

13. Armstrong admits that The Gerald Armstrong Corporation possessed a number of Gerald Armstrong's artistic and literary works, possessed rights to a number of his inventions and formulas, and was in the business of bringing peace and exploiting its assets for commercial and peaceful purposes. Armstrong admits that the business of TGAC was at one time to, inter alia, care for, promote and exploit the works of Gerald Armstrong, but denies that it now has any significant business of any kind, except to attempt to wrap up its affairs in a peaceful manner.

14. Armstrong admits that in August, 1990 he divided his 100% ownership of TGAC into four equal shares and gave these shares to Michael Walton, Michael Douglas, Lorien Phippeny and Nancy Rodes, and that these people paid him nothing for their shares.

15. Armstrong denies that shortly after making the August, 1990 transfers he initiated successive, or any, breaches of Scientology's "contract." The earliest "breach" Scientology

alleges in its State Court action is in July, 1991. In February, 1990, Armstrong had already publicly exposed Scientology's post settlement "fair game" and Scientology's use of the "contract" to obstruct justice, and had opposed Scientology's efforts to enforce the "contract," in Scientology's appeal from the Breckenridge decision.

16. Armstrong admits that he reacquired the stock which he had distributed to Walton, Douglas, Phippeny and Rodes. Armstrong admits that Andrew Armstrong, Anthony Armstrong, Thomas McPherson, Michael Dick, Trevor and Colin Dick and Michael Walton own shares in TGAC.

17. Armstrong admits that he is Teegeeack's president, sole director, and only employee. Teegeeack has been suspended and its business and activities are negligible. It does have a single bank account and Gerald Armstrong is the sole signatory thereon.

18. Armstrong lacks the information necessary to know if he testified under oath in March, 1993 that he estimated the value of the assets of TGAC to be $1,000,000,000 to $1,500,000,000.

19. Armstrong admits that he testified at the meeting of creditors in May, 1995 that The Gerald Armstrong Corporation has no present commercial value.

Armstrong incorporated TGAC in 1987 and activated it in 1988 to be a vehicle for his work in the world. Armstrong is a writer and artist with a number of unique ideas and talents. He believed that TGAC was a funny, loving and potentially commercially profitable idea, and he developed artistic and socially redeeming concepts with this belief in mind. While doing so, he continued to be aware of Scientology's ongoing hatred of him and its "fair game" toward him and others; yet while continuing to be aware of said hatred and "fair game," he hoped that peace could prevail, and he did whatever he could to make and keep peace.

In late 1989, as described above, Scientology brought Armstrong back into its conflict. Much of Armstrong's attention and time thereafter was taken up in dealing with Scientology's threat and the legal actions necessary to defend himself and others in an arena in which he had no formal training, and in which his former attorney had been contracted away from defending or assisting him by Scientology as part of its "fair game" campaign. Nevertheless, Armstrong continued to be hopeful about his and TGAC's future, continued to believe that TGAC had stupendous potential, and did not think, believe or realize that Scientology was stupid enough to seek to judicially enforce its evil "contract." In this, Armstrong admits that it can be argued that he was naive about and underestimated both Scientology's vindictiveness, and the ease with which our courts allow themselves to be used, as Hubbard mandated, to harass.

Even after Armstrong renounced his worldly things in August, 1990, he continued to believe TGAC had great potential, and could be great fun and commercially profitable for his four friends to whom he had given the company. When Armstrong woke up to the level of Scientology's vindictiveness toward him and the level of danger he and anyone connected to him was in, and after three of the owners of the majority of TGAC's stock expressed their fear of "fair game," Armstrong agreed with the four owners to accept back their majority ownership, and to be responsible for the corporation and whatever was to become of it. Armstrong was then working full time with attorney Ford Greene, under concentrated attack from Scientology, and threatened in every part of his life.

In early 1994, after becoming aware of Scientology's increasing and unending overt and covert attacks on his character and reputation, Armstrong accepted that he was completely unable to live a normal or safe life or develop any of his artistic or intellectual ideas. Armstrong saw that if he did develop any such ideas Scientology would do whatever was necessary to destroy or pervert the ideas and threaten or harm anyone with whom Armstrong became involved in the development of his ideas. Scientology has libeled Armstrong internationally, claiming in mailings to countless people in the media, government and artistic circles that he, inter alia, lived a degraded lifestyle, testified falsely, was a heavy drug pusher, is connected to kidnappers, is incompetent, is psychotic and delusory, posed nude in a newspaper, and has AIDS.

Armstrong also accepted that Scientology wants him killed and that his life has no worldly future and is in grave danger. In 1984 Scientology's head private investigator Eugene M. Ingram, who works directly with David Miscavige, threatened to put a bullet between Armstrong's eyes. Ingram was at that time involved in corrupting a Los Angeles Police Officer to give Ingram a phony authorization to wiretap and secretly videotape Armstrong, Flynn and other people. Armstrong believes that Ingram participated in Scientology's effort in 1985 to have Armstrong charged criminally by the FBI based on their false statements. In 1986 Ingram participated in an effort to have Armstrong jailed on false charges. Ingram and Miscavige are connected to known criminals, including criminals in prison, and Armstrong believes that it is very possible that Ingram and Miscavige would arrange to have him killed or harmed if they ever got him incarcerated. In 1987 Miscavige had Scientology agents spread the false rumor in Europe that Armstrong is "an admitted agent provocateur of the US government." Armstrong believes that Miscavige's intention behind the fabrication and dissemination of that lie was to facilitate and provide plausible deniability for Armstrong's assassination by "anti-US agents." Armstrong believes that Ingram's concocting and spreading the false rumor that Armstrong has AIDS was very possibly in advance of a covert intelligence operation to somehow infect Armstrong with the AIDS virus. Miscavige and Scientology, using attorney Bartilson, attempted, with repeated motions and pressure, from the end of 1992 through July of 1994 to have Armstrong jailed for contempt of court based on their perjury and perversion of the truth. Armstrong believes that Miscavige and his Scientologist and non-Scientologist agents are desperate and that their desperation is increasing. Armstrong believes that because of the bizarre and cruel lengths Miscavige and his agents have gone to and continue to go to destroy Armstrong, they see him as a tremendous risk to their illusion of power, and are driven ever more madly to destroy him.

Armstrong has been given a fun way to clean the world of all its trash. He has the way to peacefully end the world's economic slavery and sadness. He has been given the formula for the Unified Field. He believes he has been given the mathematical proof of God's Guidance. These things have untold potential and hope for mankind. Yet Scientology is doing whatever it can to destroy that potential and deny those hopes for Armstrong and mankind.

Scientology has spread the black propaganda in the artistic arena that Armstrong has no connection to art or artists. Scientology denigrates every word Armstrong has ever written. In its publications sent to media everywhere, it calls him incompetent. It has done whatever it could to destroy his reputation. Now that it has done so, and destroyed the potential value and market for his ideas, it claims he is stating falsely that TGAC has no present commercial value. The Gerald Armstrong Corporation depends completely on Armstrong's good name and good will. Scientology has done whatever it could to destroy that good name and good will. Scientology has spent millions of dollars to attack Armstrong's person, ridicule his ideas and ruin his career. Now they spend more to attack him for daring to be beaten by them to a pulp. Now they lament that what they destroyed was worth so many billions of dollars.

Armstrong has the formula for the Unified Field, something sought by scientists and thinkers for decades. Scientology spreads the calumny that Armstrong is psychotic and delusory. Armstrong sees that no one in his right mind would believe that a psychotic and delusory person could divine the formula for the Unified Field. Armstrong recognizes that Scientology's attacks and cruelty and years of "fair game" threat have had a deep affect on his mind, and he acknowledges that he is not a rocket scientist. Armstrong believes that if he were to announce and develop his formula, Scientology would destroy his work. Miscavige is jealous of Armstrong's free mind and ideas. Miscavige's jealousy is reflected by his cruel attacks, his squandering of millions of dollars of Scientology funds, and consuming countless hours of Scientologists' time in the waste of destroying Armstrong. Armstrong believes that he must resolve the Scientology conflict, and that he is called by God to resolve this conflict, before he can safely develop his ideas.

Scientology is itself responsible, by its stalking of Armstrong, its black propaganda and its physical threats, for destroying Teegeeack's potential and commercial value.

FIRST CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 727(a)(4)(A))

20. Armstrong incorporates by reference his statements above as though fully set forth herein.

21. Armstrong admits the averments of this paragraph.

22. Armstrong denies that TGAC was at all times operated by and for the benefit of Gerald Armstrong as his alter ego. Armstrong operated TGAC for the benefit of its shareholders and everyone else on earth.

23. Armstrong denies that any failure to include his ownership of Teegeeack on Schedule B was a deliberate omission of a material matter constituting a false oath or account in connection with the case. Armstrong believes that his oversight was a gift from God, which Armstrong was unaware of at the time, to bring him to this point, to cause Scientology to leap at another opportunity to attack and persecute him for God's purpose, and to cause him to write these words to facilitate the resolution of the Scientology conflict.

24. Armstrong denies that he failed to disclose his ownership of TGAC, and denies that at any time he intended to

mislead anyone as to his true financial condition or with any disregard whatsoever for the truth.

SECOND CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 727(a)(5))

25. Armstrong incorporates by reference his statements above as though fully set forth herein.

26. Armstrong admits the averments of this paragraph.

27. Armstrong denies that three large payments total $15,000. Armstrong asserts that wherever any small payments came from in 1993 totalling $15,000 is irrelevant and Scientology has no right to that information.

28. Armstrong admits that he testified that TGAC has no commercial value.

29. Armstrong denies that he has provided no satisfactory explanation for anything, including why Scientology destroys and destroyed Armstrong's life, career, reputation, friendships, good will and great ideas.

THIRD CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 523(a)(2))

30. Armstrong incorporates by reference his statements above as though fully set forth herein.

31. Armstrong denies that Scientology entered into the "contract" with Armstrong in good faith, and denies that it performed its part in full.

32. Armstrong denies that he falsely represented to Scientology that he understood every provision of the "contract." Armstrong asserts that Scientology knew through Flynn that

Armstrong knew that the "contract" was not worth the paper it's printed on, unenforceable and illegal.

33. Armstrong denies that he ever said anything about not abiding by the "contract" if it was inconvenient to him.

34. Armstrong denies that he put on a happy face at the videotaped "contract" signing in order to persuade Scientology to enter into the "contract" and pay him. Armstrong would have been very happy to not sign. Armstrong signed because Scientology promised to stop its "fair game" against him and everyone else if he did so.

35. Armstrong denies that CSI relied on anything but its "fair game" doctrine, including the intimidation and compromise of Armstrong's attorney, in order to concoct and present to Armstrong its "contract."

36. Armstrong denies that Scientology would not have paid Armstrong $800,000 if it had known that Armstrong did not intend to abide by the nondisclosure provisions of the "contract." Scientology did not know what it was paying Armstrong; it could have been anywhere between $0 and everything Scientology paid to Flynn.

37. Armstrong denies that his conduct at the time of signing Scientology's "contract" constituted false pretenses and/or false representations which Armstrong knew to be false and/or which he made with reckless disregard as to their truth or falsity. Armstrong signed to give Scientology peace and freedom which it rejected and chose instead war.

FOURTH CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts Pursuant to 11 U.S.C. Section 523(a)(6))

38. Armstrong incorporates by reference his statements above as though fully set forth herein.

39. Armstrong denies that he ever hid any assets of any kind. He denies that he ever set out on a course of conduct intended deliberately to damage and harass Scientology or anyone. Scientology is not damaged by anything Armstrong has done. Scientology precipitated and caused Armstrong's responses by its own "fair game" acts toward him, and by engaging him in post-settlement controversy and conflict. Armstrong has done nothing with the intent and purpose of impeding, injuring and destroying Scientology or its "faith." Armstrong has sought to bring about a peaceful resolution of Scientology's "fair game" toward him. Scientology has rejected each offer of peace and every attempt to resolve the conflict.

40. Armstrong denies that any of his actions are deliberate and malicious. Armstrong denies that he ever asked any funds of anyone to keep silent. Armstrong denies that he has an anti-Scientology campaign. Armstrong has attempted to defend himself in Scientology's anti-Armstrong campaign.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Cause Of Action)

41. Further answering said complaint, and as a first, separate and affirmative defense thereto, defendant Armstrong realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

The complaint and each cause of action contained therein fails to state a cause of action against defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(This Court Cannot Enjoin The Practice Of A Profession)

42. Further answering said complaint, and as a second, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Any attempt by plaintiff to limit the ability to obtain gainful employment by defendant is void and unenforceable as a matter of public policy, and constitutes an unenforceable restraint on the right of defendant to pursue his chosen profession, inasmuch as plaintiff seeks to have adjudged legal and enforced a "contract" which does not permit defendant to work as a paralegal for Ford Greene, and defendant is employed as a paralegal for Ford Greene. Plaintiff, moreover, seeks to prevent defendant from pursuing his profession of prophesy, and defendant is actively engaged in such profession.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

43. Further answering said complaint, and as a third, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant and/or obtaining the equitable relief under the doctrine of unclean hands, because plaintiff: has subjected defendant to plaintiff's "fair game" policy; has subjected defendant's attorney to "fair game" and forced him to sign an illegal contract which prevents him from defending defendant or assisting defendant against plaintiff's attacks; has itself breached the "settlement contract" which it seeks to enforce against defendant; has employed the "settlement contract" to suppress evidence of its criminal and civil wrongdoing in order to avoid liability to defendant and to other individuals and entities which it has harmed, and/or over which it has taken unfair advantage; and has in a manner not allowed by law used the Courts against defendant to achieve ends not allowed by law.

FOURTH AFFIRMATIVE DEFENSE

(In Pari Delicto)

44. Further answering said complaint, and as a fourth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Notwithstanding the things alleged of defendant in the complaint, which are denied in the applicable paragraphs herein, plaintiffs' and its counsels' conduct in connection with the events giving rise to this action bars plaintiff from recovery with regard to the complaint under the doctrine of in pari delicto. Plaintiff is at least equally at fault and at least equally responsible for the things alleged of defendant.

FIFTH AFFIRMATIVE DEFENSE

(Illegality)

45. Further answering said complaint, and as a fifth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action as a result of its acts of illegality in connection with matters that give rise to this case. Particularly plaintiff and other Scientology-related entities engaged in a wholesale attempt to obstruct justice, suppress evidence in order to deny redress, due process, and equal protection of the law to its civil and criminal victims by means of obtaining settlements of litigation in actions in various state and federal courts across the United States. In each of those actions attorney Michael J. Flynn was attorney of record, or coordinating counsel for litigants adverse to Scientology. In each of those actions litigants adverse to Scientology were coerced into signing "secret settlement contracts" the terms of which were substantially similar to those set forth in the "settlement contract" at issue herein.

Plaintiff is further barred from bringing this action because as a material part of entering the "settlement contract" with defendant, plaintiff required defendant's counsel, Michael Flynn, to sign secret side agreements for indemnification for resolution of the retrial of the original Armstrong litigation were plaintiff and other Scientology-related entities successful in obtaining reversal of Judge Breckenridge's decision on appeal. In such agreement Scientology promised to limit its collections of damages to $25,001.00 and to indemnify Flynn for the payment thereof and Flynn, in turn, would indemnify Armstrong for any such judgment. The existence of these secret, side agreements were never disclosed to Armstrong by Flynn, plaintiff, or other Scientology-related entities.

Plaintiff is further barred from bringing this action because as a material part of entering said "settlement contracts," it or its agents required attorney Flynn to promise never to take any anti-Scientology cases in the future and to not defend or assist defendant in future attacks by Scientology.

Furthermore, other acts of illegality by plaintiff and other

Scientology-related entities have been publicly documented. Plaintiffs have engaged in acts of impropriety, as set forth above, and including what the US District Court for the Central District of California referred to in a written order, entered after most of the events in issue herein, as "outrageous litigation tactics." Also, in addition to the Flynn "settlement contracts" the conduct of plaintiff and other Scientology-related organizations, entities and individuals against persons "adverse to Scientology" including citizens, counsel, judges and government authorities (including but not limited to illegal surveillance, obtaining telephone company records, breaking and entering, threatening conduct, and violence) have discouraged and intimidated knowledgeable persons from disclosing their knowledge about, or otherwise coming forward against, the illegal activities of plaintiff and other Scientology-related organizations, entities and individuals, and from assisting victims thereof to obtain redress, due process and equal protection of the law.

SIXTH AFFIRMATIVE DEFENSE

(Fraud and Deceit)

46. Further answering said complaint, and as a sixth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant because of its fraud and deceit in representing to defendant that its management had changed and no longer would engage in antisocial and illegal activities ("fair game,") that it wanted to buy peace, that it would leave defendant, and everyone else alone, and that the false affidavit that it required defendant to sign as a condition of the settlement would be disclosed only if defendant attacked Scientology. Plaintiff made the foregoing representations to defendant with knowledge of the falsity thereof at the time said representations were made and with the intent to deceive defendant, who actually and justifiably relied on those material misrepresentations to his injury by signing the "settlement contract." In fact, Scientology never intended to cease its illegal and immoral activities, never intended to buy peace with defendant, never intended to leave defendant or any other perceived "enemy" alone, never intended not to use the false declaration only if defendant attacked Scientology, and never intended to abide by the terms of the "settlement contract." Rather plaintiff and other Scientology-related entities intended to use the "settlement contract" as a tool for the implementation of their "fair game" policy and Scientology's litigation tactics so as to engineer a reversal of Judge Breckenridge's decision, to collusively resolve any re-trial of the original Armstrong case, to obtain possession of the so-called MCCS tapes which were evidence of Scientology employing attorneys for the purpose of committing future crimes and frauds, to use the false declaration in other litigation without regard to defendant's conduct, and to otherwise obstruct justice and suppress evidence of facts which discredited plaintiff and other Scientology-related entities.

Scientology's litigation strategy is as follows:

> "The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will

generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly."

From the outset, prior to the execution of the "settlement contract" with defendant, and the execution of all other Flynn "settlement contracts," it was the intent of plaintiff and other Scientology-related organizations, entities and individuals to continue to wage war on and harass defendant, to continue to engage in illegal activities and conduct, and to suppress evidence and obstruct justice by means of said agreements, and to use said agreements as a tool of "fair game" and the litigation strategy of ruin in order to ensure that information regarding Scientology's crimes and civil misconduct would stay suppressed, and its criminal and civil victims would be denied legal redress and justice.

Moreover, Flynn advised defendant that he would always be available in the future to represent defendant if defendant had to litigate with Scientology in the future. Said statement was false and misleading because Flynn had signed an agreement with Scientology promising not to represent anyone including defendant in litigation involving Scientology in the future, and specifically to not assist defendant in any way in any such litigation. Armstrong relied on the truth of Flynn's statement in signing the "settlement contract."

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

47. Further answering said complaint, and as a seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is equitably estopped from asserting each and all of the purported causes of action in the complaint by reason of its own acts, omissions, and conduct, or that of its agents, including, but not limited to the fact that it violated the "settlement contract" in that it or its agents provided information from the original Armstrong case that was the subject of the "settlement contract" to various persons and in various litigation including but not limited to The London Sunday Times, The Los Angeles Times, the instant litigation, the Corydon litigation, and in Church of Scientology of California v. Russell Miller and Penguin Books Limited in the High Court of Justice, Case No. 6140 in London, England, where a Scientology-related entity filed multiple affidavits attacking defendant.

As yet a further basis for barring plaintiff on the ground of estoppel, defendant has requested the Scientology entities to release Flynn and defendant's other former attorneys from the agreements they signed never to represent Armstrong again, and plaintiff and all other Scientology entities have refused to do so.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

48. Further answering said complaint, and as an eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, by reason of its own acts, omissions and conduct, or that of its agents. Following the December, 1986 signing of the "settlement contract," Scientology continued to attack Armstrong, published its own, and false, versions of his history, and engaged him in controversy concerning his experiences and knowledge of Scientology.

NINTH AFFIRMATIVE DEFENSE

(Mistake Of Law)

49. Further answering said complaint, and as a ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, advised said defendant that the provisions of the "settlement contract" that plaintiff is seeking to enforce against defendant were not in any way enforceable. Defendant relied on such representations, but for which he would not have signed said "settlement contract."

TENTH AFFIRMATIVE DEFENSE

(Mistake Of Fact)

50. Further answering said complaint, and as a tenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, advised defendant that the provisions of the "settlement contract" that plaintiff is seeking to enforce were not in any way enforceable. Defendant relied on such representations, but for which he would not have signed said "settlement contract."

ELEVENTH AFFIRMATIVE DEFENSE

(Conflict of Interest)

51. Further answering said complaint, and as an eleventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, in conjunction with settling defendant's case against Scientology-related entities, also settled 30 other cases, including cases of his own against Scientology-related defendants without procuring outside counsel for defendant. Scientology created the state of conflict of interest by subjecting Flynn to "fair game" and then requiring Flynn get his clients to sign illegal and immoral "settlement contracts" with Scientology to their detriment.

TWELFTH AFFIRMATIVE DEFENSE

(Duress and Undue Influence)

52. Further answering said complaint, and as a twelfth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant because Scientology had implemented "fair game" policy stratagems on defendant's attorney, Michael J. Flynn and upon other anti-Scientology litigants, and would continue such conduct against all such persons unless all said anti-Scientology litigants, including Flynn, signed "settlement contracts" substantially similar to that signed by defendant.

Further, in early December 1986, attorney Flynn and other anti-Scientology litigants, postured Armstrong as a deal breaker, by stating that their desires to settle would be ruined unless defendant Armstrong agreed to settle and led him to believe if he did not sign the agreement, they would not cooperate in such event by acting as Armstrong's witnesses and zealous advocate on the trial of his cross-complaint against Scientology set to commence shortly thereafter in the original Armstrong case.

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches)

53. Further answering said complaint, and as a thirteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of laches. Plaintiff, through its attorney Lawrence Heller, asserted from December, 1986 until March 27, 1990, that Scientology entities, pursuant to the "settlement contract," could not discuss defendant's experiences and knowledge. Scientology's delay in changing its position is unreasonable.

FOURTEENTH AFFIRMATIVE DEFENSE

(Impossibility)

54. Further answering said complaint, and as a fourteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of impossibility.

FIFTEENTH AFFIRMATIVE DEFENSE

(Frustration of Contractual Purpose)

55. Further answering said complaint, and as a fifteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of frustrating defendant's ability to perform the terms of the "settlement contract." Scientology's own actions following the "settlement" pursuant to its "fair game" doctrine has made defendant's obtaining of the "peace" and freedom from "fair game," which Scientology promised, impossible. Scientology's own actions in violation of the spirit and letter of the "settlement contract" have necessitated defendant's defense in the legal arena and in the public marketplace of ideas.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unfair and Unreasonable Contract)

56. Further answering said complaint, and as a sixteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is unreasonable and unfair as to defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Mutuality)

57. Further answering said complaint, and as a seventeenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract," as interpreted by plaintiff, lacks in reciprocity and mutuality.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Ambiguity)

58. Further answering said complaint, and as an eighteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" in ambiguous and incapable of enforcement.

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Adequate Consideration)

59. Further answering said complaint, and as a nineteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is not supported by adequate consideration.

TWENTIETH AFFIRMATIVE DEFENSE

(Unconscionability)

60. Further answering said complaint, and as a twentieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is unconscionable.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Adhesion)

61. Further answering said complaint, and as a twenty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is a contract of adhesion. Defendant had no realistic choice as to the "settlement contract's" form.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Hardship)

62. Further answering said complaint, and as a twenty-second separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" would work an unfair hardship on defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Offset)

63. Further answering said complaint, and as a twenty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Any damages that plaintiff has suffered in consequence of the alleged conduct is exceeded by the damages suffered by defendant, in consequence of the misconduct of plaintiff, and

9010

plaintiff's agents' acts of "fair game," and therefore plaintiff should take nothing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Liquidated Damages Act As Penalty)

64. Further answering said complaint, and as a twenty-fourth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendants on the grounds that the "settlement contract's" provision of liquidated damages is not an approximation of damage, but is intended to act and does act as a penalty.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(First Amendment - Religion)

65. Further answering said complaint, and as a twenty-fifth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of religion guaranteed by the state and federal constitutions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(First Amendment - Speech)

66. Further answering said complaint, and as a twenty-sixth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of speech guaranteed by the state and federal constitutions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(First Amendment - Press)

67. Further answering said complaint, and as a twenty-seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of press guaranteed by the state and federal constitutions.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(First Amendment - Association)

68. Further answering said complaint, and as a twenty-eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of association guaranteed by the state and federal constitutions.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Privacy)

69. Further answering said complaint, and as a twenty-ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right of privacy guaranteed by the state and federal constitutions.

THIRTIETH AFFIRMATIVE DEFENSE

(Implied Covenant of Good Faith and Fair Dealing)

70. Further answering said complaint, and as a thirtieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the conduct of plaintiff and its agents violates the implied covenant of good faith and fair dealing.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Justification - Defense of Another, Interests of Third Persons, and the Public)

71. Further answering said complaint, and as a thirty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

At all relevant times, the acts of defendant were privileged and justified because they were done in the defense of others, the interests of third parties, the interests of justice, and the interests of the public.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Res Judicata)

72. Further answering said complaint, and as a thirty-second separate and affirmative defense thereto, defendant

realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff's complaint, and plaintiff's claims for equitable relief and for damages, are barred by the doctrine of res judicata.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Collateral Estoppel)

73. Further answering said complaint, and as a thirty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff's complaint, and plaintiff's claims for equitable relief and for damages, are barred by the doctrine of collateral estoppel.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

74. Further answering said complaint, and as a thirty-fourth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff, and/or its agent, and/or its counsel, failed to take proper and reasonable steps to avoid or mitigate the damages alleged, and to the extent of such failure to mitigate or to avoid, damages allegedly incurred by plaintiff, if any, should be reduced accordingly.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Action Barred By Equity, California Civil Code and United States Code Provisions)

75. Further answering said complaint, and as a thirty-fifth

separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief by the general principles of equity and the specific provisions of Part IV of the California Civil Code, including but not limited to §§ 3512, 3517, 3519, 3524, (without any admission of wrongdoing by defendant) and 3533; and Federal Code provisions.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Void As Against Public Policy)

76. Further answering said complaint, and as a thirty-sixth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" is void as against public policy.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(The Settlement Contract Cannot Be Specifically Enforced)

77. Further answering said complaint, and as a thirty-seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" cannot be specifically enforced.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(The Settlement Contract Cannot Be Specifically Performed)

78. Further answering said complaint, and as a thirty-eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every

allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" cannot be specifically performed.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Due Process)

79. Further answering said complaint, and as a thirty-ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant, third parties and the public of due process of law as protected by the state constitution and by the Fifth and Fourteenth Amendments to the federal constitution.

FORTIETH AFFIRMATIVE DEFENSE

(Equal Protection)

80. Further answering said complaint, and as a fortieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant third parties and the public of equal protection of law as guaranteed by the state constitution and by the federal constitution.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Right to Counsel)

81. Further answering said complaint, and as a forty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation

contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant of his right to counsel as protected by the state constitution and by the Sixth Amendment to the federal constitution.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Public Domain)

82. Further answering said complaint, and as a forty-second separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the information that defendant is accused of disclosing is in the public domain.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Privilege)

83. Further answering said complaint, and as a forty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the acts that defendant is accused of having committed are privileged.

WHEREFORE, Defendant Armstrong prays for relief as follows:

1. That CSI takes nothing by its complaint;

2. That Armstrong recover his costs of suit herein;

3. That Armstrong recover his attorney's fees and costs of defending the suit herein;

4. That the Court award such further relief as it may deem proper.

Respectfully submitted,

DATED: September 22, 1995

GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 715 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

GERALD ARMSTRONG'S SECOND AMENDED ANSWER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

ANDREW H. WILSON, ESQ.
ESQ.Wilson, Ryan & Campilongo
115 Sansome Street, 4th Floor
San Francisco, CA 94104

LAURIE J. BARTILSON, ESQ.
Moxon & Bartilson
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

[x](By Mail)I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x](State)I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 25, 1995

Lorien Abbey Phippeny

FILED
JUN 22 1984
John J. Corcoran,
Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153 MEMORANDUM OF INTENDED DECISION
MARY SUE HUBBARD, Intervenor.	

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

122

EXHIBIT H 3

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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[4] Exhibit AAA.

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[5] "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

Paul G. Breckenridge Jr.

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. Controller Archives and Guardian Office Archives had no connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning an that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"We are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

> talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.
>
> "That's what I'm trying to remedy and prevent.
>
> . . .
>
> "To say that LRH is not capable of hype, errors or lies is certanly ^sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.
>
> . . .
>
> ". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Perso Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows an suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on boar Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos o L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

ORIGINAL

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GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

FILED

NOV 10 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

J. Steele

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S AMENEDED NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

Date: 12/1/95
Time: 9:00 a.m.
Dept: One

TO ALL PARTIES AND TO THEIR COUNSEL:

PLEASE TAKE NOTICE that on December 1, 1995, at 9:00 a.m. in Department One of the above-entitled Court, or as soon thereafter as the matter can be heard, defendant Gerald Armstrong will move this court for an Order reconsidering its grant of summary adjudication as to the twentieth cause of action of the first amended complaint.

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This motion is brought pursuant to C.C.P. § 1008 and is based on the fact that the Court's grant of summary adjudication is patently erroneous and unfair and that newly discovered evidence increases said unfairness.

DATED: November 16, 1995

HUB LAW OFFICES

By:____________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

On a motion for summary adjudication, it is improper for a Court in an exercise of its equity power, to grant a permanent injunction based solely on the content of Armstrong's speech as an "apostate" criticizing what he sees as the immorality of his former religion, while ignoring the fact that Scientology's attorney testified that both parties intended to maintain strict silence about the other?

II. STATEMENT OF FACTS

In response to defendant's argument that the meaning of the contract included an obligation by Scientology to maintain silence with respect to Armstrong (Reporter's Transcript, "RT", Exhibit A to Greene Decl. At 2:15-3:27, 4:15-5:26, 7:1-8:25, 9:14-10:24, 11:19-12:22)[1], the court asserted that it was not required to consider such evidence.

> "Yes, but the facts, those facts are not relevant, and when one reads Witkin, and you can read it, One Witkin Summary of California Law, it's in section [6]84, page 617, the rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein. Evidence cannot be admitted to show intention independent of the instrument. The words are clear."

(RT 13:2-9)

The court also stated its ruling was based on the following:

> "... the papers submitted has the Los Angeles Superior Court Order. You've referred to Los Angeles and what has taken place there. The Order says, the quote is, the agree terms are clear and unambiguous. The cross-complainant understood, that's your client, understood the terms and signed it. The duties, objections, obligations of agreement are clearly stated. Mutuality and reciprocal duties cannot be read into the unambiguous terms of the agreement. There are no provisions in the agreement prohibiting the cross-defendant from referring to cross-complainant with the press or in legal pleadings or declarations."

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[1] Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a deposition subpena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth Cause of Action at ¶ 101) He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (*Id.* at ◻ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

(RT 8:25-9:8) [2]

Based on the foregoing reasons, in derogation of California law, the court refused to consider attorney Heller's testimony. Such refusal was legally improper.

III. THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL

> "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a contract appears to be absolutely clear on its face, the court is required to engage in preliminary consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

Barris Industries, Inc. v. Worldvision Enterprises, Inc. (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v. G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934, § 983-986.

In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶ 105) [3]

Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

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[2] Yet another judge who construed the agreement stated, "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented with that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (*Id.* at ¶ 120)

[3] Among other things, after the settlement, Scientology stated that Armstrong was a perjuror, contemnor, and admitted agent provacteur of the United States Government. (Separate Statement, ¶ 105 (E).

Most importantly, Heller's contradictory statements also implicate important public policy considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg,* principles regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

> The public interest exception to the presumption that requests for stipulated reversal will be granted cannot be defined by formula, though it will be more likely preesent when the judgment in question involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons. Whether a stipulated reversal would deprive the public of an important benefit must in every case be determined "'from a realistic assessment of all the pertinent circumstances.' [Citation.]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745

Norman I. Krug Real Estate v. Praszker (1994) 22 Cal.App.4th 1814, 821.

That the public has an interest in the integrity of the judicial system cannot be disputed. *River West, Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted judicial system."]

The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons," but more importantly because it is one component of a poly-dimensional effort by Scientology to buy its way out of accountability for the consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first principle that the people have the right to know what is done in their courts." *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr., specifically found the Scientology organization to be malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6. He further provided the following factual findings, inter alia, regarding Scientology:

> In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn.
>
> In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

Id. at 8:7-9:4. (Emphasis added.)

In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalci (now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as witnesses in future litigation. The nature of the settlement agreement iS further clarified by looking at its requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States*

v. Zolin, [4] and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at ¶ 7H.)

Judge Breckenridge's decision was not an isolated abberation. Scientology has a long history of tortious and criminal behavior. [5] With this judicial context, it is inconceivable that there is no question of fact

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[4] *United States v. Zolin,* then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

Zolin arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape recordings, that had been filed under seal in *Armstrong I. Id.* 105 L.Ed.2d at 481. Scientology sought to block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for injunctive relief obtained in the United States District Court for the Central District of California. Citing the crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin,* the Supreme Court reversed the Ninth Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, the Ninth Circuit held:

> **The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege.**

United States v. Zolin (1990) 905 F.2d 1344, 1345 (emphasis added.).

Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in *Zolin,* the Scientology Organization required Armstrong to "assist [the Scientology Organization] in recovering these documents as quickly as possible, including but not limited to these tapes."

[5] *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means "that person 'may be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California* (1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modren-day "Christian inquisition" intended to "neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar* (1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ... The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also

(continued...)

on the issue that Scienbtology's intention as to the settlement agreement at issue was to "buy [its] way out" *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v. Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game Doctrine.

Under this view, the $800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the settlement. [6] It is a barometer of the value which Scientology placed on the suppression of Armstrong's testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization. [7] For this Court to particpate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the events set forth above "tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." *Church of Scientology v. Armstrong, supra*. 232 Cal.App.3d at 1068. One result is that "public court business is conducted in private [and then] it becomes impossible to expose

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[5](...continued)
acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church."]; *Church of Scientology v. Commissioner* (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records. Petitioner gave false information to and concealed relevant information from the IRS about its corporate structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

[6] As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep his word for years until Scientology's betrayal of their promises became completely intolerable.

[7] The nature of Scientology continues to be judicially recognized as a live public controversy of great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that

> "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-profit purposes to advance understanding of issues concerning the Church which are the subject of on-going public controversy. ... [¶] Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. [T]hey form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings may well be considered as having been made for the purposes of criticism, comment or research falling within the fair use doctrine"

Exhibit B, to Greene Decl.)

corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

Scientology's litigation practices bring the question of judicial corruption into high relief.

On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York, Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the following statements:

> In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director" 'Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigous cult the country has ever seen. No cult extracts more money from its members.'"
>
> "Those who criticise the church – journalists, doctors, lawyers and even judges so often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

(Exhibit C to Greene Decl. At pp. 7)

In the most stark and blatant terms, this Court has made a judgment call on the facts by regarding Armstrong's veracity and character when it argues or factually concludes that Armstrong has engaged in "double-speak." [8] The judgment call that the Court has made has the most profound impact which stampedes on constitutional rights upon which the public good, trust and interest is necessarily predicated.

IV. THE INJUNCTION VIOLATES THE FIRST AMENDMENT

The inappropriateness of the court's injunction is dramatically underscored by what the court has enjoined: Armstrong's exercise of his right as an apostate to criticize his former religion while his former religion not only assails his reputation and character, but also his Christianist religious beliefs. The court's injunction forces Armstrong, upon penalty of imprisonment, to maintain abject silence in the face of a Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such violates two constitutionally essential principles.

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[8] It upsets Armstrong greatly that the court refers to him in Orwellian terms as having engaged in "double speak." (RT 4:6) Not only is a credibility determination inappropriate on a motion for summary adjudication, *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064, said characterization reflects a lack of understanding by the court of the facts. If the contradictory statements of attorney Heller are considered, there is a "germ of a defense" and a factual issue that Armstrong has not engaged in "double speak" at all. Rather, Scientology is engaged in a gargantuan effort to perpetrate a massive fraud on the American Court and the American People. See, discussion of the November 14, 1995 grant of summary judgment on behalf of *Time in Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company; and Richard Behar, infra.*

Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

> "[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form."

Justice Cardozo referred to freedom of speech as "the matrix, the indispenible condition, of nearly every other form of freedom." *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

> [The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ...

Citizen Publishing Co. V. United States (1969) 394 U.S. 131, 139-140. The reason for protecting the free flow of information is that "[o]ur system of government requires that we have faith in the ability of the individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird* (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

> "... above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.' [Citation.]"

Police Department v. Mosley (1972) 408 U.S. 92, 95-96.

The court's injunction violates the public interest, and eviscerates its own ability to fulfill its purpose - the ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from participating in discussion of "noxious doctrine," which is "silence coerced by law – the argument of force in its worst form." *Whitney*, 274 U.S. at 375-376.

There is a "germ of a defense" that the instant setttlement agreement violates the public interest because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair

Game Doctrine which can have a devastating impact on"important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons." Money, even $800,000, cannot be allowed to buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice will have become Injustice. Such is the irony and the mistake of the Court's injunction. As a matter of law, this enforcement of this contract, by this organization against Armstrong, or any other person, is wrong and cannot be enforced in the way that this Court is enforcing it.

The Court prohibits Armstrong not only from discussing his pre-December 1986 first-hand knowledge of Scientology as a former Scientologist. It prevents him from even partaking in the current raging public controversy on whether Scientology is good or bad, a religion or a cult, a helper or a predator of mankind. He cannot read a newspaper article in the day's paper and discuss the article with another customer while at a coffee house. [9] He cannot possess the article, or even the published opinion.

In addition to the injunction constituting a most egregious prior restraint on pure speech, the nature of the speech which it impacts, is subject to additional First Amendment protection because it is of an independantly religious nature. Armstrong is a Christianist who believes in God and in Jesus and in the Bible. (Separate Statement at ¶ 147, 157, 159)

Although Scientology pays lip service to being compatible with Christianist teachings, (Separate Statement at ¶¶ 160-161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated Scientologist beleives that "Christ, God and Heaven are false ideas 'implanted' in humans by electronic means to enslave them." (*Id.* At ¶ 163) Scientology secretly teaches its adherents that its "auditing" procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶ 164.) Scientology enforces acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Any person in Scientology who professed a belief in Christ, or God, or who sought help through prayer, was viewed and handled as a "psychotic." (*Idl.* At ¶ 166) As a Christianist, Armstrong believes that this "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.) There are others who share Armstrong's beliefs. (*Id* at ¶ 169-172.)

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[9] For example, if Armstrong is in San Anselmo drinking coffee tomorrow morning and reads about most of Scientology's case against Time Magazine, he cannot turn to his neighbor and "That's a good decision!" without risking contempt and jail of this Court's injunction. Neither could Armstrong use Time Magazine's May 6, 1991 article as material for discussion with his fellow citizens without running afoul of "silence coerced by law – the argument of force in its worst form." (A copy of the articule, "Scientology: The Cult of Greed" is attached to the Greene Decl. As Exhibit D.

Speech about religion is speech entitled to the general protections of the First Amendment. This includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

> "In the realm of religious faith, and in that of political belief, sharp differecnces arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excessess and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democrary."

Cantwell v. Connecticut (1940) 310 U.S. 296, 310.

Armstrong beleives that God has sent him to help the "little people" whom Scientology "persecutes." (Separate Statement at ¶¶ 173-175) "It is a function of speech to free men from the bondage of irrational fears." *Whitney, supra.,* 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any expression of the counterbalancing Christianist view, violates Armstrong's right to freely exercise his religion, even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the Fair Game Doctrine.

> "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624, 641.

Armstrong's views on Scientology were sufficiently supported by evidence and conceptually powerful to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong's view were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment would still compel protection against the Court's prior restraint of his speech.

> We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Id. At 641-642.

Armstrong's position does go to the heart of the existing order because he asserts that no amount of money, not even $1 million, can buy the truth. He says the First Amendment is not for sale. [10]

The Fourteenth Amendment supports Armstrong's position.

> The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.

Id. 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no " grave and immediate danger" to the State's interest. The only value which supports the injunction is the right to contract. While not to be belittled, such right is also not ultimate.

Just because citizens contracted to purchase homes with the express covenant that said home would never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer* (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth Amednment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First Amendment Rights without running afoul of the First and Fourteenth Amendments.

All of the speech which the court has ordered repressed is religious in nature because the content of such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to benefit the public, has obtained a court order to silence the words of a former member who warns the public of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of the First Amendment's establishment clause.

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[10] The Court's reliance on *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 is misplaced. If there had been no agreement between the parties, as testified to by Scientology's attorney Heller, that each side would maintain silence about the other, and Armstrong had voluntarily, knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he said anything back he could be sued, enjoined and jailed, the agreement perhaps could be enforced if Armstrong was competent to enter into such an agreement. Since there is competent evidence from attorney Heller, for the purposes of summary judgment the Court cannot conclude that there is no triable issue whether or not Armstrong's purported waiver of his First Amendment rights was constitutional. Since, however, there is such a triable issue, summary judgment, particularly on an equitable cause of action for a permanent injunction silencing Armstrong is notably without adequate legal basis.

In order to pass muster under the First Amendment's estasblishment clause, the governmental action must pass a three-pronged test.

> "First the [governmental order] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its authority in the domain of religious conviction. Government may not convey any message of 'endorsement or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-1162.

The injunction fails the last two prongs of this test. The order advances Scientology's religious purpose while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The order allows Scientology to propagate its belief that God and Jesus aremplants" to enslave man, while at the same time it censors Armstrong's belief that such is blasphemy.

Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail him for the act of standing up and speaking his convictions, whether the court considers him to be mad or not. It is inconceivable that in our democratic society the Government will enforce a religious edict by jailing a citizen who dares to speak out against it.

V. THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI.

On October 10, 1995, in *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164, the Court ordered "all direct testimony at trial shall be in the form of declarations." (Exhibit E [Court's Order filed October 10, 1995] to Greene Decl.) The subject matter of that proceeding is the same as in the instant proceeding (Exhibit F & G [Armstrong's Answer and Order filed October 10, 1995 denying Scientology's motion to strike said Answer] to Greene Decl.) Thus, the instant injunction precludes Armstrong from representing himself in that litigation because he cannot talk to people about Scientology in order to obtain declarations in his own defense. [11] Such is a denial of Armstrong's First Amendment right to redress, Fifth and Fourteenth Amendment rights to due process and to a fair trial, and his Sixth Amendment rights to counsel and to confrontation.

V. THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE

In an act of supreme irony, the court ordered all publicly filed documents in this case possessed by Mr. Greene, Armstrong's counsel "not be distributed to third parties." The public file in this case has been open for public review for almost 4 years as it should be. In Armstrong's own prior litigation, the Court of Appeal held

> "there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records non public. [Citation.] To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public ... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as Craemer, supra, and Rosato v. Superior Court (1975) 51 Cal.App.3d 190 ..., which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but, 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. ... [¶] If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum access to proceedings and records of judicial tribunals. Thus, in Sheppard v. Maxwell (1966) 384 U.S. 333, 350, the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (In re Shortridge (1893) 99 Cal. 526, 530) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records ...."

Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068.

There is simply no basis for this Court to order Armstrong's counsel to become subject to Armstrong's agreement. Indeed, since the order is the judicial enforcement of an agreement, said order violates Rule of

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[11] The allegations set forth in Armstrong's Answer stand, Scientology's motion to strike having been denied on October 6, 1995. (Exhibit G to Greene Decl.)

Professional Responsibility 1-500. [12] He has written all the legal arguments in this case. He has represented numerous other former Scientologists from whom he has obtained many Scientology materials and in the course of whose representation he has obtained copies of all documents filed in the instant litigation.

VI. TO THE EXTENT THAT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID.

The enforcement of the agreement prevents Armstrong from working as a paralegal for Ford Greene. Such is an unreasonable restraint of trade.

Business and Professions Code section 16600 provides that, subject to exceptions contained in its chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind to that extent is void." The Restatement 2d, Contracts § 186 states: "(1) A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."

Although covenants not to compete may be enforceable if for a limited time period, such a covenant in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working as a paralegal is void. [13]

VII. THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS

Assuming without conceding that as a matter of contractual interpretation CSI was not required to maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation. *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a legal action as well as in equity *Id.* at 728.

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[12] Rule 1-500 (A) states: "A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of the member to practice law ...."

[13] The preliminary injunction in this case allowed for Armstrong to perform routine clerical tasks for Greene, even on Scientology cases, provided that the same did not involve the communication of knowledge that Armstrong obtained in Scientology. Scientology's order to show cause re contempt against Armstrong for answering the telephone, relaying messages and executing proofs of service in Scientology litigation handled by Greene did not violate the preliminary injunction. (Armstrong's Separate Statement at ¶¶ 23, 37, Exhibits 1 (J)(L).)

> Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of inequity.'"

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

> The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. *Any unconscientious conduct* upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his defense of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man.

VIII. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED: November 16, 1995

HUB LAW OFFICES

By: ____________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's3. motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. I represent Lawrence Wollersheim in *Wollersheim v. Church of Scientology of California*, Los Angeles County Superior Court, Case No. C 332 027. Mr. Wollersheim is a defendant in an action entitled *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143. A true and correct copy of the Memorandum Opinion of the Court, filed therein October 3, 1995, is attached hereto as Exhibit B.

4. I represent Uwe Geertz who was a defendant in a defamation action that Scientology dismissed on the eve of trial in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal which litigation arose out of certain statements attributed to Dr. Geertz in the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991. A true and correct copy of the Opinion and Order filed on November 14, 1995, in *Church of Scientology International v. Time Warner, Inc; Time Inc. Magazine Company; and Richard Behar*, United States District Court, Southern District of New York is attached hereto as Exhibit C.

5. A true and correct copy of the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991 in attached hereto as Exhibit D.

6. In *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is

attached hereto as Exhibit E. Attached hereto as Exhibit F is a true and correct copy of Armstrong's answer in said litigation. Attached hereto as Exhibit G is a true correct copy of the Court's order filed October 6, 1995 in said litigation denying Scientology's motion to strike said Answer.

6. On October 17, 1995, this Court's permanent injunction was filed herein and notice thereof was served by mail on October 18, 1995.

3. The instant motion is brought because the Court cut me off and prevent me from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous. In addition, further facts and law affecting the court's holding has developed after the hearing on October 6, 1995.

Pursuant to the laws of the State of California and under penalty of perjury I hereby declare that the foregoing is true and correct and that this declaration is executed on November 16, 1995 at San Anselmo, California.

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S AMENDED MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire — BY PERSONAL SERVICE
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. — BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 16, 1995

COPY

9066

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

BEFORE THE HONORABLE GARY W. THOMAS

--OOO--

CHURCH OF SCIENTOLOGY INTERNATIONAL,)
PLAINTIFF,)
VS.) NO. 157680
GERALD ARMSTRONG, ET AL.,)
DEFENDANTS.)

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

FRIDAY, OCTOBER 6, 1995

APPEARANCES:

FOR THE PLAINTIFF:

ANDREW H. WILSON
WILSON, RYAN & CAMPILONGO
115 SANSOME STREET
FOURTH FLOOR
SAN FRANCISCO, CA 94104

LAURIE J. BARTILSON
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SUITE 2000
HOLLYWOOD, CA 90028

FOR THE DEFENDANTS:

FORD GREENE
711 SIR FRANCIS DRAKE
BOULEVARD
SAN ANSELMO, CA 94960

REPORTED BY:
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

--OOO--

FRIDAY, OCTOBER 6, 1995 MORNING SESSION

PROCEEDINGS

--OOO--

THE COURT: WE DO HAVE THE CHURCH OF SCIENTOLOGY VERSUS GERALD ARMSTRONG.

MR. WILSON: GOOD MORNING, YOUR HONOR. ANDREW WILSON AND LAURIE BARTILSON ON BEHALF OF PLAINTIFF AND MOVING PARTY, THE CHURCH OF SCIENTOLOGY.

MR. GREENE: AND FORD GREENE ON BEHALF OF DEFENDANT, GERALD ARMSTRONG. IT WAS AT MY REQUEST THAT THIS HEARING IS BEING HELD.

THE COURT: YES. MR. GREENE, WHAT DO YOU HAVE TO SAY?

MR. GREENE: FIRST, YOUR HONOR, WITH RESPECT TO YOUR TENTATIVE RULING, I WANT TO DIRECT MY ARGUMENT TO YOUR HOLDING THAT THE FACTS SUBMITTED BY ARMSTRONG DO NOT ESTABLISH A MUTUAL CONFIDENTIALITY REQUIREMENT.

THE INTERPRETATION OF THE COURT OF THE SETTLEMENT AGREEMENT AS REFLECTED BY THE TENTATIVE RULING WOULD HAVE THE RESULT THAT SCIENTOLOGY COULD PUBLICLY ACCUSE MR. ARMSTRONG OF BEING A LIAR, A PERJUROR AND AN AGENT PROVOCATEUR OF THE FEDERAL GOVERNMENT, AND THAT IF ARMSTRONG TOOK ANY ACTION IN RESPONSE THAT THE RESULT WOULD BE THAT HE WOULD VIOLATE THE PROPOSED PERMANENT INJUNCTION AND WOULD BE SUBJECT TO BEING JAILED FOR CONTEMPT OF A COURT ORDER.

WHAT THE COURT HAS MISSED IN THE TENTATIVE RULING IS THE EVIDENCE THAT ARMSTRONG HAS SUBMITTED FROM

SCIENTOLOGY'S OWN COUNSEL, LAWRENCE HELLER, WHO THE COURT WILL RECALL WAS THE LAWYER WHO WAS PRESENT AT THE SIGNING OF THE SETTLEMENT AGREEMENT, AND HELLER'S OWN SWORN TESTIMONY AS SET FORTH IN SEPARATE FACTS 101 AND 102, WHICH THE COURT DID NOT ADDRESS AND DID NOT INCLUDE IN THE TENTATIVE RULING, STATES THAT THE CONFIDENTIALITY PROVISIONS WERE MUTUAL, THAT THEY WERE INSISTED UPON BY ALL PARTIES, AND THAT THEY PERTAINED NOT ONLY TO ANY INFORMATION THAT THE FORMER SCIENTOLOGY OFFICIAL POSSESSED WITH RESPECT TO THAT ORGANIZATION, BUT IT ALSO PERTAINED -- THE CONFIDENTIALITY PROVISION PERTAINED WITH RESPECT TO INFORMATION HELD BY SCIENTOLOGY AS TO ITS FORMER PARISHIONER OR FORMER OFFICIAL.

THAT SINGLE PIECE OF EVIDENCE IS SUFFICIENT UNDER THE CIRCUMSTANCES AND WITH RESPECT TO A 437(C) MOTION TO RAISE A TRIABLE ISSUE OF FACT.

WHAT THE COURT HAS DONE BASED ON THE TENTATIVE RULING HAS BEEN SOLELY TO BASE ITS ANALYSIS ON THE FOUR CORNERS OF THE DOCUMENT AND HAS NOT LOOKED AT ALL TO WHAT THE CIRCUMSTANCES WERE WHICH SURROUNDED THE PARTIES ENTERING INTO THE AGREEMENT, AND ALSO HAS NOT LOOKED AT THE CONDUCT OF THE PARTIES SUBSEQUENT TO THE AGREEMENT, AND THE AUTHORITY WITH RESPECT TO SUBSEQUENT CONDUCT IS -- THAT IS AUTOMOBILE SALES VERSUS EAST BAY MOTOR CAR DEALERS, 10 CAL.APP.3RD 419.

BASICALLY WHAT THAT TALKS ABOUT IS EVEN IF THE LANGUAGE IN A PARTICULAR AGREEMENT APPEARS ON ITS FACE CLEAR, WHICH WE --

THE COURT: NOW, MR. GREENE, THE STATEMENT BY

ARMSTRONG IN HIS DECLARATION, FACT ONE-H, SAYING MY CAREFUL WEIGHING OF MY OPTIONS, THIS IS HIS WORDS, IN FACT REFLECTS THE DURESS I WAS UNDER TO SIGN AND IS NOT REFLECTIVE OF AN ABSENCE OF DURESS --

MR. GREENE: THAT'S A DIFFERENT ARGUMENT.

THE COURT: -- DOUBLE SPEAK --

MR. GREENE: THAT'S A DIFFERENT ARGUMENT. I'M NOT ADDRESSING MYSELF TO THE DURESS ARGUMENT. I'M NOT ADDRESSING MYSELF TO THE ARGUMENT OF ALL OF THE KINDS OF CONDUCT THAT ARMSTRONG --

THE COURT: CAREFUL WEIGHING OF OPTIONS --

MR. GREENE: I UNDERSTAND.

THE COURT: -- IS TO BE INCONSISTENT WITH THE ABSENCE OF THE FREE EXERCISE OF WILL.

MR. GREENE: THAT'S NOT MY ARGUMENT. I'M TALKING ABOUT THE MUTUALITY, BECAUSE IF THE AGREEMENT ACCORDING TO ATTORNEY HELLER, WHO STATED UNDER PENALTY OF PERJURY REPRESENTING CSI WHO'S THE PARTY HERE IN A MOTION TO QUASH ARMSTRONG'S DEPOSITION TESTIMONY IN ANOTHER CASE BEFORE THIS LAWSUIT WAS EVER FILED, BEFORE THERE WAS ANY DISPUTE ABOUT THE SETTLEMENT AGREEMENT, HELLER SAYS THIS WAS MUTUAL, BOTH PARTIES SOUGHT IT.

BOTH PARTIES WERE TO MAINTAIN SILENCE AND NOT SAY A DOGGONE THING ABOUT ONE ANOTHER, AND THAT SPECIFIC EVIDENCE IS FOUND AT ARMSTRONG'S EVIDENCE ONE-AD. THAT'S A DECLARATION FROM THE VERY LAWYER WHO WAS PRESENT AT THE SIGNING OF THE SETTLEMENT AGREEMENT AND WHO ALSO SAYS I WAS PERSONALLY INVOLVED IN THE NEGOTIATIONS WHICH RESULTED IN

THIS SETTLEMENT AGREEMENT.

SO I'M NOT TALKING ABOUT DURESS. I'M NOT TALKING ABOUT FRAUD YET. I'M TALKING ABOUT MUTUALITY, AND THAT I'M TALKING ABOUT THE GOOSE AND GANDER RULE AND THAT WHAT WAS GOOD FOR --

THE COURT: THERE'S NO SUCH RULE NOW.

MR. GREENE: WELL, THAT'S WHAT YOUR TENTATIVE RULING --

THE COURT: THAT'S --

MR. GREENE: -- CLEARLY INDICATES.

THE COURT: -- OTHER PERSONS NOW.

MR. GREENE: JUDGE, YOU DO A VERY GOOD JOB OF ALMOST DERAILING ME.

THE POINT IS THAT THE COURT DIDN'T LOOK AND DIDN'T INCORPORATE THOSE FACTS AND THOSE FACTS ARE NOT DISPUTED. THAT'S NUMBER ONE. ACCORDING TO THE CASE LAW THAT THE SUBSEQUENT CONDUCT OF THE PARTIES TO AN AGREEMENT IS VERY RELIABLE EVIDENCE OF WHAT THEIR INTENTIONS WERE IN ENTERING INTO THE AGREEMENT, AND THAT'S WHAT THE COURT HAS TO DO FIRST IS TO ASCERTAIN WHAT WAS THE INTENTIONS OF THE PARTIES, AND IN ORDER TO DO THAT THE COURT'S GOT TO PUT ITSELF IN THE SHOES OF THE PARTIES AT THE TIME THE AGREEMENT WAS ENTERED INTO, AND THAT LEADS ME TO THE SECOND SUPPORTING ARGUMENT WITH RESPECT TO THE RECIPROCAL NATURE OF THE KEEP QUIET PROVISIONS, AND THAT'S BASED ON CIVIL CODE SECTION 1647.

THE COURT: WELL, IS THERE SOMETHING IN THE CONTRACT THAT'S SO DIFFICULT TO EXPLAIN THAT HAS TO BE

EXPLAINED BY ACTIONS?

MR. GREENE: YES.

THE COURT: WHAT IS IT?

MR. GREENE: THERE IS.

THE COURT: BASICALLY KEEP YOUR MOUTH SHUT. WE GAVE YOU $800,000 DOLLARS.

MR. GREENE: AH, BUT SEE, THAT'S -- I KNOW THAT, JUDGE, AND THAT'S BEEN THE STICKING POINT IN MY PERCEPTION OF YOUR VIEW OF ARMSTRONG AND THIS CASE ALL THE WAY ALONG. HE GOT $800,000 BUCKS SO HE DOGGONE WILL -- BETTER KEEP HIS MOUTH SHUT.

THE COURT: AND IT'S IN THE AGREEMENT. IF YOU OPEN YOUR MOUTH, YOU HAVE TO PAY BACK $50,000 EVERY TIME.

MR. GREENE: BUT -- WELL, THAT'S -- YET THE LIQUIDATED DAMAGES --

THE COURT: HE OPENED HIS MOUTH AND NOW THEY WANT $50,000 PER EACH TIME.

MR. GREENE: JUDGE --

THE COURT: THAT'S THE SUBJECT OF ACTS OF THE CHURCH.

MR. GREENE: JUDGE, THE ADDITIONAL -- WHAT THE COURT DIDN'T DO AND THE AUTHORITY IS PG&E VERSUS G.W. THOMAS GRANGE --

THE COURT: YES, NO RELATION TO ME, ALTHOUGH I LIKED SEEING THAT IN THE STREETS OF SAN FRANCISCO YEARS AGO.

MR. GREENE: -- 69 CAL.2D, 33, DISCUSSES --

THE COURT: I ASKED MY FATHER, AND HE ADVISED ME I WASN'T NAMED AFTER HIM EITHER.

MR. GREENE: -- DISCUSSES THAT THE COURT NEEDS TO LOOK AT THE OBJECT NATURE AND SUBJECT MATTER OF THE CONTRACT SO THAT IT CAN PLACE ITSELF IN THE POSITION OF THE PARTIES. AND WHAT IS BEFORE THE COURT IS THAT AS OF DECEMBER 6TH, 1986, ARMSTRONG HAD BEEN JUDICIALLY CREDITED BY JUDGE BRECKENRIDGE (SIC) AS BEING TRUTHFUL AND AS BEING ACCURATE.

SCIENTOLOGY IN THE SAME DECISION HAD BEEN JUDICIALLY FOUND TO BE FULLY CAPABLE OF INTIMIDATION OR OTHER PHYSICAL OR PSYCHOLOGICAL ABUSE IF IT SOUGHT -- IF IT LED TO THE ENDS THAT THEY SOUGHT. JUDGE BRECKENRIDGE (SIC) ALSO --

THE COURT: NOW, THE OTHER SIDE SAYS IN ESSENCE IF ONE ACCEPTS YOUR ARGUMENT, ONE IS FACED WITH THE UNESCAPABLE CONCLUSION, YOUR CLIENT, HE MADE A PROMISE WITHOUT THE INTENTION OF PERFORMING IT.

MR. GREENE: SEE, THE PROBLEM IS, JUDGE, THAT ARMSTRONG --

TTHE COURT: THEY DID PERFORM, THE OTHER SIDE, BECAUSE THEY GAVE THE $800,000.

MR. GREENE: THE PROBLEM WITH THAT ARGUMENT AND THAT VIEW IS THAT IT OCCLUDES ANY REFERENCE TO THE FACT THAT ARMSTRONG AT THE TIME OF THIS SETTLEMENT AGREEMENT HAD A PENDING CROSS-COMPLAINT AND THAT CROSS-COMPLAINT INCLUDED BEING RUN OVER BY A CAR DRIVEN BY AGENTS OF SCIENTOLOGY, INVOLVED IN FREEWAY ACCIDENTS IN VEHICLES DRIVEN BY SCIENTOLOGY, SURVEILED, SPIED ON, AND HARASSED. IN LESS THAN FIVE MONTHS PRIOR TO THE POINT THAT THIS CASE -- THAT THE SETTLEMENT AGREEMENT WAS ENTERED INTO AND ARMSTRONG

AGREED TO DISMISS HIS CROSS-COMPLAINT THAT WAS BASED ON CONDUCT OF THAT SORT, AN L.A. COUNTY JURY HAD AWARDED $30 MILLION DOLLARS ON BEHALF OF LARRY WASHORN (SIC) ON BEHALF OF SCIENTOLOGY.

IT'S NOT THAT ARMSTRONG WAS PAID $800,000 DOLLARS IN ORDER TO KEEP HIS MOUTH SHUT. HE WAS PAID $800,000 DOLLARS TO DISMISS HIS CROSS-COMPLAINT, AND IT WAS RECIPROCALLY AGREED BETWEEN SCIENTOLOGY AND ARMSTRONG THAT BOTH OF THEM WOULD KEEP THEIR MOUTHS SHUT, AND WHEN SCIENTOLOGY DIDN'T, WHEN SCIENTOLOGY WAS OUT IN PUBLIC AND IN COURT STAYING ARMSTRONG'S A LIAR, ARMSTRONG'S A PERJUROR, ARMSTRONG'S A PROVOCATEUR, WAS INVOLVED IN SOME GOVERNMENTAL CONSPIRACY TO TRY TO TAKE OVER THE CHURCH OF SCIENTOLOGY, THEN AT THAT POINT, THE REQUIREMENT FOR HIM TO CONTINUE TO ADHERE TO THE SILENCE PROVISIONS AS THEY PERTAINED TO HIM NO LONGER EXISTED.

SO IT'S NOT NEARLY SO SIMPLE THAT GERALD ARMSTRONG WAS JUST SORT OF OUT IN LIFE AND ACCEPTED ALMOST A MILLION DOLLARS TO KEEP HIS MOUTH SHUT. HE ACCEPTED -- AND YOU LOOK ALSO, JUDGE, AT SCIENTOLOGY'S OWN EVIDENCE WHICH IS THEIR OWN EVIDENCE AT EXHIBIT ONE-C AT PAGES FOUR AND FIVE, AND THAT WAS THE VALUATION OF ALL OF MICHAEL FLYNN'S CLIENTS, SOME TWENTY CLIENTS THAT WERE ENGAGED IN THIS GLOBAL SETTLEMENT ALL OF WHICH --

THE COURT: NOW, MR. GREENE, OF COURSE, THE PAPERS SUBMITTED HAS THE LOS ANGELES SUPERIOR COURT ORDER. YOU'VE REFERRED TO LOS ANGELES AND WHAT'S TAKEN PLACE THERE. THE ORDER SAYS, THE QUOTE IS, THE AGREEMENT TERMS ARE CLEAR

AND UNAMBIGUOUS. THE CROSS-COMPLAINANT UNDERSTOOD, THAT'S YOUR CLIENT, UNDERSTOOD THE TERMS AND SIGNED IT. THE DUTIES, OBJECTIONS, OBLIGATIONS OF AGREEMENT ARE CLEARLY STATED. MUTUALITY AND RECIPROCAL DUTIES CANNOT BE READ INTO THE UNAMBIGUOUS TERMS OF THE AGREEMENT. THERE ARE NO PROVISIONS IN THE AGREEMENT PROHIBITING THE CROSS-DEFENDANT FROM REFERRING TO CROSS-COMPLAINANT WITH THE PRESS OR IN LEGAL PLEADINGS OR DECLARATIONS.

MR. GREENE: WELL, JUDGE, IT'S NOT REALLY FAIR FOR TO YOU RELY ON THAT, BECAUSE A GRANT OF A MOTION FOR PRELIMINARY INJUNCTION --

THE COURT: WELL, NOW, I AGREE THAT THE RULING IS NOT THE LAW OF THE CASE.

MR. GREENE: OKAY. YOU ALSO HAVE ANOTHER JUDGE FROM THE SAME COURT SAYING THAT THIS IS THE MOST AMBIGUOUS ONE-SIDED UNFAIR AGREEMENT HE'D EVER SEEN, AND IF IT HAD BEEN SUBMITTED TO HIM HE WOULDN'T HAVE -- OR TO JUDGE BRECKENRIDGE (SIC) THE ORIGINAL JUDGE WHO PRESIDED OVER THE TRIAL WHERE SCIENTOLOGY ORIGINALLY SUED ARMSTRONG, HE WOULDN'T HAVE ENFORCED ANY OF IT.

SO WE CERTAINLY HAVE ACCURACIES IN THE EYE OF THE BEHOLDER, AND JUST BECAUSE ONE JUDGE SAYS THAT THIS IS UNAMBIGUOUS DOESN'T MEAN ANOTHER JUDGE IS GOING TO DO IT, AND YOU HAVE TO INDEPENDENTLY DECIDE, AND BASED ON YOUR TENTATIVE RULING, YOU DIDN'T LOOK AT LAWRENCE HELLER'S DECLARATION WHERE HE SAYS UNDER OATH REPRESENTING CSI THAT IT WAS A MUTUAL PROVISION, AND THAT'S WHAT IS THE SINGLE MOST GLARING OMISSION, WITH ALL DUE RESPECT, IN YOUR

TENTATIVE RULING, IS THAT YOU DON'T TAKE THAT INTO YOUR EVALUATION AT ALL. YOU LOOK AT THE FOUR CORNERS, AND YOU SAY THAT PROVISION SEVEN-I, THE CLEAN SLATE PROVISION, ONLY APPLIES IF THERE'S LITIGATION AMONG THE PARTIES SO THERE'S NO VIOLATION WITH RESPECT TO THAT ON SCIENTOLOGY'S SIDE, AND THEN WITH RESPECT TO 18-D, DON'T TELL ANYBODY ABOUT THE EXISTENCE OF THIS SETTLEMENT AGREEMENT, THAT WASN'T VIOLATED EITHER.

I MEAN ARMSTRONG'S PUT IN THE POSITION WHERE HE FINDS OUT THAT SCIENTOLOGY IS ACTIVELY CONDUCTING AN APPEAL IN HIS OWN CASE THAT HE BY THIS AGREEMENT IS PROHIBITED FROM OPPOSING, AND HE GOES TO THE COURT OF APPEAL AND HE SAYS COURT OF APPEAL, THIS IS THE AGREEMENT, I'M GIVING IT TO YOU UNDER SEAL, IT SAYS THAT I CAN'T PARTICIPATE IN MY OWN APPEAL, BUT I WANT TO ANYWAY. THE COURT OF APPEAL SAYS YES, YOU CAN. THAT IS NOT CLEAR.

THAT'S IN THE RECORD HERE. THAT WAS NOT CONSIDERED BY THE COURT, AND FOR THE PURPOSES OF SUMMARY JUDGMENT IT'S TOO SOON AND IT'S TOO FAST, BECAUSE IT'S NOT SO CLEAR CUT. AND JUDGE, GERHARDT (SIC) WHEN SCIENTOLOGY FIRST SOUGHT TO ENFORCE THIS AGREEMENT UNDER THE RUBRIC OF THE ORIGINAL SCIENTOLOGY LITIGATION, IT'S THAT ON THE RECORD AND IT'S IN EVIDENCE BEFORE THE COURT, HE SAID THIS AGREEMENT --

THE COURT: YES, YOU'VE ARGUED THAT FOR A LONG TIME NOW. SOMETHING YOU WANT TO SAY IN RESPONSE?

MR. WILSON: VERY BRIEFLY. WHAT'S REALLY HAPPENED HERE IS THAT THERE HAVE BEEN SEVERAL COURTS THAT

HAVE APPLIED THE GANDER RULE THAT TOOK A GANDER AT THE AGREEMENT, REALIZED IT WASN'T AMBIGUOUS, AND HELD THAT IT WAS ENFORCEABLE, HELD THAT THERE WAS NO SUCH MUTUALITY, THAT THE CONFIDENTIALITY PROVISIONS WENT ONE WAY, JUDGE HOHIGIN (SIC) AWARDED US A PRELIMINARY INJUNCTION. THAT WAS AFFIRMED BY THE COURT OF APPEAL. JUDGE HORSICKS (SIC) FROM LOS ANGELES GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF ACTION. YOU GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF ACTION PREVIOUSLY IN, I BELIEVE, DECEMBER, AND NOW YOU GRANTED SUMMARY JUDGMENT AGAIN WITH THE AGREEMENT IN PROPERLY DECIDING THAT YOU CAN LOOK AT THE FOUR CORNERS AND YOU CAN SEE THAT THERE'S NO SUCH MUTUALITY PROVISION.

AS FAR AS THE HELLER DECLARATION IS CONCERNED, MR. GREENE MISREPRESENTS WHAT'S IN THERE. IT DOESN'T SAY THAT BOTH PARTIES WANTED THE MUTUALITY OF THE CONFIDENTIALITY.

I THINK THAT THIS MATTER HAS BEEN ARGUED ENOUGH, AND I REALLY DON'T THINK IT NEEDS ANY FURTHER ARGUMENT.

MR. GREENE: I'VE GOT HELLER'S PAPERS RIGHT HERE IF THE COURT WANTS TO LOOK AT EXACTLY WHAT THEY SAY, AND I'M SORRY, MR. WILSON, YOU'RE WRONG. WITH RESPECT TO THE COURT OF APPEALS REVIEW OF THE PRELIMINARY INJUNCTION, THE COURT OF APPEAL SPECIFICALLY AND EXPRESSLY WITHHELD ANY DETERMINATION OF THE ENFORCEABILITY OF THE AGREEMENT. IT ONLY LOOKED AT THE INJUNCTION. IT DID NOT EVALUATE AND MAKE A JUDICIAL DETERMINATION WITH RESPECT TO THAT.

SO I WILL ALSO -- IN ARMSTRONG CLEARLY SETS OUT-- JUDGE BRECKENRIDGE (SIC) IN HIS DECISION SAID ARMSTRONG AND

HIS LAWYER WERE FREE TO TALK ABOUT SCIENTOLOGY. THEY TRIED TO SHUT HIM UP BEFORE, AND HE SAID THEY'RE FREE TO TALK ABOUT ANY OF ARMSTRONG'S EXPERIENCES, ANY OF THE DOCUMENTS THAT WERE IN EVIDENCE, THEY -- THERE'S NO RESTRICTION.

SO WHY IN THE WORLD WOULD ARMSTRONG AT THAT POINT IN HIS LIFE AFTER HAVING LITIGATED AGAINST SCIENTOLOGY FOR FIVE YEARS AND THROUGH A THIRTY-DAY COURT TRIAL, COURT TRIAL -- IT WASN'T A JURY TRIAL, WAS A COURT TRIAL -- WHERE THE JUDGE SAYS YOU CAN SAY WHATEVER YOU WANT ABOUT YOUR FORMER RELIGION, YOU CAN SAY WHATEVER YOU WANT TO, AND HE HAD A CROSS-COMPLAINT THAT BY ALL INTENTS AND PURPOSES LOOKED LIKE IT WAS A BELL RINGER, IT WAS SET TO GO TO TRIAL WITHIN THREE MONTHS, AND HE GETS $800,000 BUCKS. HE DIDN'T GET $800,000 BUCKS JUST TO KEEP HIS MOUTH SHUT, GO AWAY INTO THE FIRMAMENT AND SCIENTOLOGY CAN SAY YOU'RE A LIAR, YOU'RE A PERJUROR, YOU'RE THIS AND YOU'RE THAT, AND IF YOU COME OUT OF THE FIRMAMENT, WE'RE GOING TO HAMMER YOU AND GET AN INJUNCTION AND PUT YOU IN JAIL IF YOU OPEN YOUR MOUTH AGAIN.

HE DIDN'T AGREE TO THAT, AND IT'S NOT REASONABLE UNDER THE CIRCUMSTANCES TO CONCLUDE THAT HE HAD THAT INTENT WHEN HE ENTERED INTO THE AGREEMENT, AND SCIENTOLOGY'S OWN EVIDENCE, THEIR OWN EVIDENCE WHICH IS --

THE COURT: WELL, REALISTICALLY, MR. GREENE, FOR THE ARMSTRONG POSITION, THEY SAY THERE'S A MUTUAL CONFIDENTIALITY REQUIREMENT. HE POINTS TO HIS BELIEFS, THE PURPORTED BELIEFS OF HIS ATTORNEY, AND WE HAVE THE STATEMENT MADE BY AN ATTORNEY FOR ONE OF THE SCIENTOLOGY ORGANIZATIONS.

MR. GREENE: THE PLAINTIFF HERE --

THE COURT: YES, BUT THE FACTS, THOSE FACTS ARE NOT RELEVANT, AND WHEN ONE READS WITKIN, AND YOU CAN READ IT, ONE WITKIN SUMMARY OF CALIFORNIA LAW, IT'S IN SECTION 84, PAGE 617, THE RULES OF INTERPRETATION OF WRITTEN CONTRACTS ARE FOR THE PURPOSE OF ASCERTAINING THE MEANING OF THE WORDS USED THEREIN. EVIDENCE CANNOT BE ADMITTED TO SHOW INTENTION INDEPENDENT OF THE INSTRUMENT. THE WORDS ARE CLEAR.

MR. GREENE: WELL, THE PROBLEM IS, JUDGE, WHEN YOU LOOK AT --

THE COURT: SO WE HAVE -- THE FACT IS THAT ARMSTRONG HASN'T RAISED A TRIABLE ISSUE AS TO WHETHER THE PLAINTIFF BREACHED THE TERM OF THE SETTLEMENT AGREEMENT. THE OTHER ARGUMENTS WITH REGARD TO OBSTRUCTION OF JUSTICE AND HIS RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT, ET CETERA, WELL, THAT ITT CASE HAD DEALT WITH THAT.

MR. GREENE: NO, IT DIDN'T BECAUSE THE ITT CASE --

THE COURT: IT'S POSSIBLE --

MR. GREENE: IT SAYS POSSIBLE, BUT FOR A WAIVER TO BE EFFECTIVE --

THE COURT: IT'S POSSIBLE TO WAIVE EVEN FIRST AMENDMENT FREE SPEECH --

MR. GREENE: FREE SPEECH RIGHTS.

THE COURT: -- BY CONTRACT.

MR. GREENE: CORRECT. IT SAYS THAT, BUT IT ALSO SAYS THAT IN ORDER FOR THE WAIVER TO BE EFFECTIVE, IT'S

ESSENTIALLY THE SAME STANDARD AS WHEN YOU ENTERED A GUILTY PLEA IN A CRIMINAL CASE. IT'S GOT TO BE KNOWING, INTELLIGENT, AND VOLUNTARY, AND THERE'S ABSOLUTELY NO EVIDENCE HERE THAT SUCH WAS A CASE, PARTICULARLY IN LIGHT OF HELLER'S DECLARATION, SCIENTOLOGY'S OWN COUNSEL, SAYS BOTH PARTIES WERE SUBJECT TO KEEPING THEIR MOUTH SHUT ABOUT THE OTHERS.

MS. BARTILSON: EXCUSE ME, YOUR HONOR, BUT I HAVE TO JUST DIFFER WITH MR. GREENE'S CHARACTERIZATION OF NO EVIDENCE. THERE IS A VIDEOTAPE OF THE SIGNING OF THE AGREEMENT SHOWING MR. ARMSTRONG SIGNING IT VOLUNTARILY. MR. ARMSTRONG HAS PUT IN DECLARATION AFTER DECLARATION SAYING HE DISCUSSED IT WITH MULTIPLE ATTORNEYS BEFORE HE SIGNED IT. I DON'T THINK THAT THAT'S -- THERE'S EVEN ANY QUESTION OF FACT AS TO WHETHER OR NOT HE ENTERED INTO IT VOLUNTARILY WITH FULL KNOWINGNESS OF THE PROVISIONS.

THE COURT: THERE'S NO REASON TO CHANGE MY TENTATIVE RULING.

MR. GREENE: WELL, BEFORE YOU TELL ME I CAN'T TALK ANYMORE, I WANT TO KEEP --

THE COURT: WELL, THAT'S WHAT I'M SAYING.

MR. GREENE: I WANT TO GIVE YOU ANOTHER CASE, JUDGE, WITH RESPECT TO THEIR OBJECTIONS TO HEARSAY AND YOUR CHARACTERIZATION --

THE COURT: NO.

MR. GREENE: THE EXCEPTION --

THE COURT: NO.

MR. GREENE: -- IS 1241(A) CONTEMPORANEOUS

STATEMENT BY --

THE COURT: WE'LL GO ON TO BLACK POINT FOREST PROJECT --

MR. GREENE: JUDGE, ALSO --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: JUDGE --

THE COURT: YOUR MATTER'S OVER.

MR. GREENE -- WITH RESPECT TO --

THE COURT: I'VE GIVEN YOU MORE THAN TWENTY MINUTES. THIS IS A LAW AND MOTION MATTER. TIME IS UP.

MR. GREENE: I UNDERSTAND, JUDGE, BUT THE WAY THAT THIS PRELIMINARY INJUNCTION IS BROADER THAN THE LANGUAGE OF THE CONTRACT ITSELF. IT'S BROADER THAN THE LANGUAGE OF THE CONTRACT ITSELF.

THE COURT: BLACK POINT FOREST VERSUS THE CITY OF NOVATO.

MR. GREENE: AND ALSO IT'S -- AND IT'S WAY BROADER, AND IN ADDITION, IT TAKES MY FILE IN THIS CASE AND YOUR ORDER IS ALSO WRONG BECAUSE YOU'VE STRICKEN --

THE COURT: I'LL HAVE YOU TAKEN AWAY, MR. GREENE.

MR. GREENE: -- YOU'VE STRICKEN HIS EVIDENCE AND YOU'VE DENIED HIS ABILITY --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: -- TO EVEN APPEAL THIS --

THE COURT: YOU'RE INTERFERING WITH ANOTHER CASE.

MR. GREENE: -- GIVEN --

THE COURT: EXCUSE ME, MR. GREENE.

MR. GREENE: THE BREADTH OF YOUR ORDER AND THE

EFFECT OF IT, JUDGE, IS THAT YOU'VE MADE IT IMPOSSIBLE FOR ARMSTRONG TO EFFECTIVELY APPEAL. THE INCORRECT DECISION THAT YOU'RE RENDERING NOW, BECAUSE YOU SAY THAT HIS EVIDENCE IS IRRELEVANT AND HAS TO BE STRICKEN --

THE COURT: EXCUSE ME. EXCUSE ME.

(WHEREUPON, PROCEEDINGS WERE CONCLUDED)

--OOO--

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

I, ELAINE PASSARIS, DO HEREBY CERTIFY THAT I AM A DULY CERTIFIED SHORTHAND REPORTER OF THE STATE OF CALIFORNIA, AND THAT AS SUCH REPORTER I ATTENDED THE HEARING OF THE FOREGOING CAUSE AND TOOK IN STENOTYPE THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER.

THAT I THEREAFTER CAUSED THE FOREGOING PROCEEDINGS OF SAID ACTION TO BE TRANSCRIBED BY COMPUTER UNDER MY DIRECTION, AND THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF SAID STENOTYPE SO TAKEN.

DATED: October 30, 1995

Elaine Passaris
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

PUBLISH 9083

UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 15 1995

JAMES R. MANSPEAKER
CLERK

BY DEP. CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-B-2143

RELIGIOUS TECHNOLOGY CENTER, a California non-profit corporation,

Plaintiff,

v.

F.A.C.T.NET, INC., a Colorado corporation: LAWRENCE WOLLERSHEIM, an individual; and ROBERT PENNY, an individual,

Defendant.

MEMORANDUM OPINION AND ORDER

KANE, J.

On August 21, 1995 Religious Technology Center ("RTC"), a California non-profit corporation, filed a verified complaint against Lawrence Wollersheim, Robert Penny and F.A.C.T.NET, Inc. ("FACTNET") for injunctive relief and damages for copyright infringement (17 U.S.C. § 501) and trade secrets misappropriation (Colo. Rev. Stat. § 7-74-102 to -110 (1986)).

Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a) and (b) in that this is an action for copyright infringement under 17 U.S.C. § 501. Supplemental jurisdiction exists under 28 U.S.C. § 1367 over the trade secrets misappropriation claim, which RTC alleges arises out of the same transaction and occurrences.

Before me is RTC's motion for preliminary injunction.

I. Background.

RTC is one of the formal entities constituting the Church of Scientology (the "Church") founded by L. Ron Hubbard. FACTNET is a non-profit educational and charitable corporation registered and with its principle place of business in Colorado. Wollersheim and Penny are former Scientologists.[1] Wollersheim serves as President of the Board and Executive Director of FACTNET and Penny is a member of the FACTNET Board.

Defendants, operating on minimal financial resources, maintain a library and archive information concerning, inter alia, an ongoing public controversy regarding the Church's status as a religious tax exempt organization and charges that its practices involve harmful psychological coercion which has resulted in mental and physical harm to a significant number of its adherents.

Much of the information maintained by Defendants is made available publicly on FACTNET's Bulletin Board Service on the international computer network known as the Internet.[2] Other data is stored in a private portion of the FACTNET library which includes information concerning and provided by former Scientologists and their families.

RTC alleges Defendants have placed on the Internet unauthorized copies of unpublished religious works called OT materials, often referred to as "Advanced Technology." They list the materials in issue ("the Works") in Exhibit "A" to the complaint.

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[1] The Church of Scientology and Wollersheim have opposed each other in litigation in various cases. In Wollersheim v. Church of Scientology, 15 Cal. App. 4th 1476 (Cal. Ct. App. 1992), an action in which Wollersheim alleged intentional and negligent infliction of emotional injury, the court affirmed its prior judgment in his favor as to the cause of action for intentional infliction with the exception of the $30 million damage award which it reduced to $500,000 for compensatory damage and $2 million for punitive damages. A final judgment which the evidence discloses remains unpaid.

[2] A bulletin board service ("BBS") usually requires users to dial in through telephone lines to access specialized information or services.

RTC maintains it has the exclusive license to the Works. It asserts the materials consist of unpublished works of L. Ron Hubbard, the founder of the Church of Scientology. The Church only permits access to each of the works to members who have attained the proper level of spiritual enlightenment and made the requisite financial contributions. Such access is through a highly controlled system known as "auditing" involving supervision by a senior member of the Church. RTC claims the Works are available at only seven sites around the world and are never removed from these locations.

Defendants maintain any of the Works in its possession were obtained lawfully and are maintained in the non-public section of Defendants' library. Wollersheim has provided consulting services to lawyers representing clients in litigation involving the Church but denied making copies of the Works for this purpose. Defendants assert they have not posted any of the Works to the Internet for public availability and that it is their policy not to do so.

According to Wollersheim, the only deviation from this policy was between August 1 and August 3, 1995, when, due to miscommunication, Arnold P. Lerma, a FACTNET director posted some of the Works to the Internet. The portions of the Works published by Lerma had been part of an unsealed public court record in the Central District of California in Church of Scientology

9086

International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal.[3] These materials were attached to an affidavit filed by Fishman in that case. Wollersheim testified he received a copy of the affidavit from Fishman's counsel in the course of the consulting services Wollersheim provided in that case.

On August 15, 1995, Defendants posted a message to a newsgroup on the Internet claiming Lerma had acted on their behalf and with their endorsement and that they stood behind his actions.

II. Procedural History.

On August 21, 1995, Judge Babcock, ruling on ex parte motions, granted a temporary restraining order against Defendants. His order restrained Defendants from the unauthorized copying, use or reproduction of the Works identified in Exhibit "A" to the complaint or any other part of the works that are part of the Advanced Technology, in particular the copying into "any computer data base, information service, storage facility, archives, or other computerized network or facility." The order further restrained the destruction or concealing by Defendants of such Works in their possession. It also required RTC to file a bond in the amount of $10,000 with the court forthwith. Judge Babcock set a hearing for a preliminary injunction before me on August 25, 1995 due to his being unavailable on that date.

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[3] On August 11, 1995, RTC sued Lerma in the United States District Court for the Eastern District of Virginia for copyright infringement and trade secret misappropriation in Religious Technology Center v. Lerma, No. 95-1107-A. On August 11, 1995, RTC obtained a restraining order and order of seizure and impoundment against Lerma. On August 22, 1995, RTC amended its complaint in that case, adding the Washington Post and two of its reporters as defendants. On August 30, 1995, that court denied RTC's motion seeking to enjoin the Post defendants from copying, disclosing, using, displaying, or reproducing Advanced Technology materials which it had obtained from the same public court file.

Judge Babcock ordered Defendants to deliver the infringing articles within their possession and control into the custody of RTC's counsel. In this regard, he issued a writ of seizure and ordered a portion of the court file sealed until execution of the writ of seizure. Judge Babcock also granted RTC's motion for expedited discovery, ordering the depositions of all three Defendants to take place on August 23, 1995.

On August 22, 1995, extensive materials, including computer equipment, computer software and voluminous documents were seized from Defendants' premises pursuant to the writ. They were placed in the custody of RTC's counsel who proceeded to search for allegedly infringing materials.

On August 23, 1995, Defendants filed motions for a protective order, for temporary stay of expedited discovery and to require immediate delivery of confidential, proprietary, and privileged documents belonging to Defendants to their counsel of record, Thomas B. Kelley. RTC filed an opposition to the motion for a stay.

On August 24, 1995 I ordered an extension of the time for taking the depositions of Defendants and an extension of the restraining order until September 8, 1995 when the preliminary injunction hearing commenced. On August 25, 1995 I ordered Defendant's counsel or his representative be allowed to be present while Plaintiff's counsel searched the impounded evidence. I further ordered any items to which Defendants' might claim privilege to be segregated from the materials impounded and handed over to the court.

The preliminary injunction hearing took place before me on September 8, 11, and 12, 1995. At the termination thereof, I issued an oral ruling. I denied RTC's request for a preliminary injunction and ordered RTC to return and restore to the Defendants all seized materials. I ordered Defendants to maintain the status quo as to the possession of all copyrighted materials at issue in the case and restricted each of Defendants to making only fair use of the materials. I reserved the right to clarify my oral order by way of a written opinion. This is that opinion.

III. Preliminary Injunction.

I have authority to issue a preliminary injunction under Federal Rule of Civil Procedure 65. In addition, the Copyright Act specifically authorizes me to grant a preliminary injunction "on such terms as [I] may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502. The Colorado Uniform Trade Secrets Act similarly grants me the power to grant injunctive relief "to prevent or restrain actual or threatened misappropriation of a trade secret."

A preliminary injunction is an extraordinary remedy providing the potential for considerable harm yet its emergency nature does not afford the court the usual degree of careful consideration afforded by the deliberative processes of a trial. As a

9089

consequence, the issuance of such an injunction, like the power of contempt, is one which is at best used sparingly, if at all.

Moreover, the very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. I will not dwell on this, but it is helpful to observe that our legal forefathers were not fools; the complete phrase is status quo ante bellum which literally means "the state of things before the war began."

Given this purpose and the caution the law prescribes there are four basic considerations or findings which must be made before an injunction can issue. These same four factors likewise assist in determining the scope of the injunction and the conditions which attach to it.

> A party seeking injunctive relief must establish:
>
> (1) it will suffer irreparable injury unless the injunction issues;
>
> (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party;
>
> (3) the injunction would not be adverse to the public interest; and
>
> (4) substantial likelihood that the movant will eventually prevail on the merits.

Walmer v. United States Dep't of Defense, 52 F.3d 851, 854 (10th Cir. 1995). The Tenth Circuit has adopted a modified interpretation of the fourth "likelihood of success" element. Id. "If the movant has satisfied the first three requirements for a preliminary injunction, the movant may establish likelihood of success by showing questions going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberative investigation." Id. This modified test applies, however, only where the first three requirements are satisfied.

Similarly, the less rigorous test for injunctive relief sometimes employed in copyright cases is only applicable where the plaintiff has made a prima facie showing of infringement. See, e.g., Financial Control Assoc's v. Equity Builders, Inc., 799 F. Supp. 1103, 1113 (D. Kan. 1992); 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 14.06[A] (1995).

The circumstances of this case warrant consideration and balancing of all four factors.

A. Substantial Likelihood of Success on the Merits.

1. Copyright Infringement Claim.

RTC contends it will succeed on the merits of its claims for copyright infringement because it owns a valid copyright and the copyrighted work was copied by Defendants without its authorization.

To prevail in a copyright infringement action, a plaintiff must prove (1) ownership of a valid copyright and (2) defendant copied, "protected components of the copyrighted material." Gates Rubber Co. v. Bando Chemical Indus., Ltd., 9 F.3d 823, 831 (10th Cir. 1993). If a certificate of registration in accordance with 17 U.S.C. § 410(c) has been obtained, there is a presumption in favor of the plaintiff that a valid copyright exits. Id. at 832. The

9091

defendant then has the burden of overcoming this presumption. Id.

RTC claims it has certificates of registration for the Works, is their exclusive licensee and is entitled to protect them as if it were the original holder of the copyrights. At the outset of the preliminary injunction hearing, Defendants' counsel stipulated only for the purposes of this proceeding that the Works were originated by L. Ron Hubbard and that RTC has a valid title to the copyright in the Works.

Once a plaintiff shows it holds a valid copyright, it must then prove the defendant unlawfully appropriated some protected portions of the copyrighted work at issue. Id. This question breaks down into two separate inquiries:

> 1) [W]hether the defendant, as a factual matter, copied portions of the plaintiff's [writings]; and 2) whether, as a mixed issue of fact and law, those elements of the [writings] that have been copied are protected expression and of such importance to the copied work that the appropriation is actionable.

Id. In Gates Rubber the court noted that the inquiry does not end with a finding that the defendant copied the plaintiff's materials. "Liability for copyright infringement will only attach where protected elements of a copyrighted work are copied." Id. at 833. The Copyright Act provides:

> In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 102(b). The 1976 House Report noted copyright protection does not preclude others from using the ideas or

information revealed by the author's work, rather it refers only to the expression of the work adopted by the author. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 57 (1976), reprinted in 17 U.S.C.A § 102 app. at 17 (1976)).

RTC asserts Defendants themselves and through others directly copied the copyrighted Works. It maintains Defendants duplicated portions of the Advanced Technology materials onto a newsgroup[4] on the Internet and onto a Web site,[5] making them accessible to Internet subscribers. These subscribers could then download the works onto their own computers and have personal copies.

RTC additionally claims Defendants provided Arnaldo Lerma with copies of the materials at issue. Lerma ultimately posted these copies onto the Internet. RTC claims the act of providing Lerma with the copies constitutes contributory copyright infringement.

The evidence showed, however, that, apart from the Lerma posting, the only copying of the Works by Defendants was scanning them onto their computer and placing them in the private section of their library without making them available to the public over the Internet or otherwise. Copying of this sort by Defendants falls within the well established limitation on the exclusive right of copyright ownership recognized in the Copyright Act, 17 U.S.C § 107.

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[4] A "newsgroup" is an electronic discussion group, serving as a bulletin board for users to post universally accessible messages, and to read and reply to those from others.

[5] World Wide Web is a network of computers on the Internet that maintains documents users can read and transfer with a number of programs.

9093

Under this limitation, "the fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright." 17 U.S.C.A. § 107. The Copyright Act lists four factors for consideration in determining whether a particular use made of a work is fair use:

> (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
>
> (2) the nature of the copyrighted work;
>
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
>
> (4) the effect of the use upon the potential market for or value of the copyrighted work.

Id.

"Fair use" is a factual determination. Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 549 (1985). Each fact must be assessed in light of the total circumstances of the case and then a conclusion can be made as to whether the doctrine applies.

In Harper & Row, a magazine editor obtained a copy of a copyrighted manuscript which he knew he was not authorized to publish. In an attempt to get a "scoop" on the magazine that had the rights to publish the piece, he published excerpts from it. The Court found for the copyright holders, determining on a factor by factor basis that there was no valid fair use on the part of the defendant. the Court held the questioned publication's effect on the market is the "single most important element of fair use." Id.

at 566.

Even if, as RTC maintains, the Works have not been published, the concerns of the Court in Harper & Row do not apply here. Defendants' use of the materials was not with the intention of depriving the planned publication of its full impact. Further, no evidence was presented as to the effect of the Defendants' copying of the Works upon the potential market for them.[6]

The evidence showed the Works are esoteric in nature and are delivered to certain followers by advanced Scientologists known as "auditors" as part of an elaborate system of instruction. The only financial harm RTC would suffer would be if followers were to forsake the Church's didactic methodology in favor of self instruction through the Works copied by Defendants. There was no suggestion, let alone evidence, of this potential for financial loss to the Church.[7]

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[6] This case is distinguishable from Bridge Publications, Inc. v. Vien, 827 F.Supp. 629 (S.D. Cal. 1993), appeal reinstated and transferred, 53 F.3d 344 (Fed. Cir. (Cal.) 1994). The Vien court held there was a copyright infringement and fair use did not apply. In that case, as here, an affiliate of the Church sued to enjoin the use of copyrighted works. There, however, the defendants were charging for classes that used the documents as part of their study. Id. at 632. The court found defendants used the materials for the same purposes as the holders of the copyright. Id. at 635. The court also found that there was a wholesale copying of the work and that this weighed heavily against fair use. Id. at 636. Finally, the Vien court found that because the defendant's use of the materials was substantially similar to that of the Church, there was an economic harm as demand for sale or distribution from the Church would diminish. Id.

[7] An argument that RTC may be harmed financially by Defendants' intended criticism of the Works through copying would not prevail. In a similar case, the Second Circuit ruled that economic harm from criticism is not actionable under copyright

The alleged copying by the Defendants was not of a commercial nature. Rather, it was made for non-profit purposes to advance understanding of issues concerning the Church which are the subject of ongoing public controversy.

RTC has not introduced the Works in their entirety into evidence to enable comparison of the amount and substantiality of the portion of the Works copied with each copyrighted work as a whole. Notably, however, even if a work is introduced in its entirety, the copying may nevertheless constitute fair use. See, e.g., Sony Corp. v. Universal City Studios, 464 U.S. 417, reh'g denied, 465 U.S. 1112 (1984); Rotbart v. O'Dwyer Co., 34 U.S.P.Q. 2d 1085 (S.D.N.Y. 1985).

Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. they form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control.

No evidence was introduced showing a likelihood that a follower of the Church would consider the postings by Lerma as a market substitute for the Works. Nor did the evidence show that the postings were of a commercial nature or had any effect on the potential market for the works. As such, the postings may well be considered as having been made for the purposes of criticism,

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laws. New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152, 160 (2nd Cir.), cert. denied, 498 U.S. 921 (1990).

comment or research falling within the fair use doctrine.

At this preliminary stage of proceedings, I find RTC has not shown a substantial likelihood of success on the merits of its copyright claim.

2. Misappropriation of Trade Secrets Claim.

RTC claims Defendants have misappropriated its trade secrets by acquiring, disclosing and using portions of the Works without authorization. Such claim is governed by the Colorado Uniform Trade Secrets Act and is not preempted by federal copyright statutes. See Gates Rubber, 9 F.3d at 846-47.

Colorado defines trade secrets as:

> [T]he whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession, which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Colo. Rev. Stat. § 7-74-102(4) (1986).

What constitutes a trade secret is a question of fact for the trial court. Gates Rubber, 9 F.3d at 848. Colorado courts apply a number of factors in determining whether a trade secret exists. They include:

> 1) the extent to which the information is known outside the business;
>
> 2) the extent to which it is known to those inside the business, i.e., by the employees;
>
> 3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;

> 4) the savings effected and the value to the holder in having the information as against competitors;
>
> 5) the amount of effort or money expended in obtaining and developing the information; and
>
> 6) the amount of time and expense it would take for others to acquire and duplicate the information.

Colorado Supply Co., Inc. v. Stewart, 797 P.2d 1303, 1306 (Colo.App. 1990), cert. denied, Oct. 7, 1991.

Despite RTC and the Church's elaborate and ardent measures to maintain the secrecy of the Works; they have come into the public domain by numerous means. RTC's assertion that the only way in which the materials have escaped its control was through two thefts in Denmark and England was not supported by the evidence. A former senior Scientology official testified to ongoing difficulties the Church incurred in keeping the Works secret, including members losing materials in their possession. The evidence also showed portions of the Works have been made available on the Internet through persons other than Lerma, with the potential for downloading by countless users.

The Works posted by Lerma were publicly available as part of an unsealed public court record in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx), C.D. Cal. Wollersheim testified copies of the Works in his possession were sent to him by an attorney representing defendants in that case for whom he had provided consulting services.

In August 1995, reporters of the Washington Post obtained copies of the Works from the unsealed Fishman file. The newspaper's publication of portions of the materials prompted RTC to request injunctive relief in Religious Technology Center v. Lerma, Civil Action No. 95-1107-A (E.D. Va.). On August 30, 1995, that court found the materials had escaped into the public domain and onto the Internet and that Lerma was not their only source on the Internet. Id., slip op. at 14-15 (E.D. Va. Aug. 30, 1995). The court concluded RTC could not establish for the purpose of the preliminary injunction motion that the documents were "not generally known" as required by the Virginia statute.

In the course of the hearing before me, RTC changed its position with regard to what materials constitute the purported trade secrets. At the outset, RTC maintained the entire Works were trade secrets. After evidence was heard indicating that the Works were in the public domain, RTC claimed that only portions of the Works, rather than the whole were secret. RTC's ambivalence and admission as to the non-secret nature of certain portions of the Works casts some doubt casts on the secret status of Works as a whole.

The evidence showed the Works are widely known outside of the Church through multiple sources. As such, they are not secret within the meaning of the Colorado statute and RTC has not shown a substantial likelihood of success on the merits of its trade secrets claim.

B. Irreparable harm.

I do not find RTC will suffer irreparable harm if the broad injunction sought is not granted. There has been no showing that

RTC has lost nor will lose competitive advantage through Defendants' fair use of the Works, nor that such use has been for commercial purpose.

RTC claims use of the materials impedes its right to exercise its religious belief that the materials must be kept secret. I am not persuaded that a denial of the injunction sought will deprive followers of the Church of their freedom to exercise their religious beliefs. RTC effectively requests that I advance its religion at the expense of Defendants' lawful rights to use the materials for the purposes of criticism and research. The United States Constitution, common law and the Copyright Act preclude me from doing so.

C. Balancing of Hardships.

The evidence does not reflect that the threatened injury to RTC outweighs the damage the broad injunction sought may cause the Defendants. Such relief would effectively pull the plug on Defendants' electronic library, infringe not only on their rights of criticism and research but be the death knell of FACTNET. Any threatened injury to RTC is outweighed by this potentially devastating hardship to Defendants.

D. Public Interest.

Public interest lies with the free exchange of dialogue on matters of public concern. The injunction sought would silence the Defendants as participants in an ongoing debate involving matters of significant public controversy. Relief of this kind does not serve the public interest.

IV. Conclusion.

Having weighed all the relevant factors, I conclude RTC has not shown a substantial likelihood of success on the merits and the balance of harms weighs in favor of Defendants. Accordingly,

IT IS ORDERED THAT Plaintiff's motion for preliminary injunction is DENIED;

IT IS FURTHER ORDERED THAT Plaintiff is to return and restore to Defendants immediately and at Plaintiff's expense all seized materials in the condition they were when taken and to the precise places from which they were taken;

IT IS FURTHER ORDERED THAT Defendants are to maintain the status quo as to their possession of all copyrighted materials at issue in this case and are restricted to making only fair use thereof. Defendants are prohibited from making any additional copies of the materials or transferring them in any manner or publicizing them other than in the context of fair use.

Dated this 15th day of September, 1995 at Denver, Colorado.

JOHN L. KANE, JR.
U.S. SENIOR DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JAMES R. MANSPEAKER, CLERK
U.S. Courthouse
1929 Stout Street, C-145
Denver, CO 80294
(303) 844-3433

Date: September 15, 1995

Case No. 95-B-2143

The undersigned hereby certifies that on the above date a true and correct copy of the preceding **MEMORANDUM OPINION AND ORDER** signed by Judge John L. Kane, Jr. on **September 15, 1995** was mailed to the following:

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Judge Lewis Babcock

JAMES R. MANSPEAKER, CLERK

By: N. Hatcher
Deputy Clerk

9102

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

- against -

TIME WARNER, INC., TIME INC.
MAGAZINE COMPANY, and RICHARD
BEHAR,

Defendants.

92 Civ. 3024 (PKL)

OPINION AND ORDER

APPEARANCES

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LEISURE, District Judge:

Plaintiff Church of Scientology International ("CSI") brought this action to recover for damages allegedly suffered from the publication of false and defamatory statements concerning CSI in the cover story of the May 6, 1991 issue of Time magazine. Defendants Time Warner, Inc., Time Inc. Magazine Company, and Richard Behar (collectively "Time") move this Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56, on the grounds that they lacked actual malice in publishing the article about CSI, an admitted public figure. See Plaintiff's Response to Defendants' First Set of Requests for Admission to Plaintiff. For the reasons stated below, defendants' motion is granted in part and denied in part.

DISCUSSION

"Summary judgment is proper only if, viewing all evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact" as to an essential element of a claim. Buttry v. General Signal Corp., No. 95-7135, 1995 WL 628556, at *3 (2d Cir. Oct. 26, 1995). A public figure suing for libel must prove, as one of the essential elements of the claim, that the defendant published the material with actual malice, i.e., actual knowledge of its falsity or with serious subjective doubts as to its truth. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); St. Amant v. Thompson, 390 U.S. 727, 731-32 (1968). The First Amendment further requires that the plaintiff prove actual malice with clear and convincing evidence. See id. Therefore, "there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986).

Although a defendant's state of mind is at issue in a libel case covered by New York Times, that fact alone cannot preclude summary judgment, for First Amendment protection cannot be emasculated by unwillingness on the part of a court to grant summary judgment where "affirmative evidence of the defendant's state of mind" is lacking. A libel suit cannot be allowed to get to the jury, at enormous expense to the defendant, based on mere assertions of malice by the plaintiff. Cf. St. Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1318 (3d Cir. 1994) ("Summary judgment for the publisher is quite often appropriate because of the difficulty a public official has in showing 'actual malice.'"). Indeed, without judicious use of summary judgment to dispose of libel suits, "the threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." Immuno AG. v. Moor-Jankowski, 74 N.Y.2d 548, 561, 549 N.E.2d 129, 135, 549 N.Y.S.2d 938, 944 (1989) (internal quotation marks omitted), vacated, 497 U.S. 1021 (1990), adhered to, 77 N.Y.2d 235, 567 N.E.2d 1270, 566 N.Y.S.2d 906 (1991), cert. denied, 500 U.S. 954 (1991). Because the freedoms guaranteed by the First Amendment are designed to ensure that debate, not litigation, is vigorous, the subjective nature of the test of liability cannot create a bar to summary disposition of libel suits.[1] See McLee v. Chrysler Corp., 38 F.3d 67, 68 (2d Cir. 1994) (ruling that district court's view -- that summary judgment was unavailable in discrimination cases where employer's intent was at issue -- was unsupportable). Indeed, this Court finds little to distinguish silence enforced by oppressive litigation from "silence coerced by law -- the argument of force in its worst form." Whitney v. California, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring).

In addition, the Court must "consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." New York Times Co., 376 U.S. at 270. As quoted in New York Times,

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[1] In this respect, the Court notes that both debate and litigation have been vigorous in the case at bar. CSI published an 80-page rebuttal to the Time article, which it distributed to church members, business leaders, and political figures. See Memorandum of Law in Support of Defendants' Motion for Summary Judgment ("Def.'s Memo.") at 3. In addition, CSI published a series of full-page advertisements in USA Today challenging the article and Time's accuracy and biases in publishing it. See id.; Affidavit of Lynn R. Farny ("Farny Aff.") ¶ 16, Exs. 14, 15. The discovery in this case has been extensive, even though discovery has not yet been directed to the issue of truth or falsity. For example, Richard Behar, the author of the article, was deposed for 16 1/2 days over a 12 month period. See Def.'s Memo. at 4. The submissions to the Court in support of or in opposition to this motion consist of thousands of pages of memoranda, affidavits, and exhibits.

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Id. at 271 (quoting Cantwell v. Connecticut, 310 U.S. 296, 310 (1940)). Because sharp disagreement is essential to robust debate about important issues, "[a]ctual malice under the New York Times standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991). The speaker's belief in his statements, even his exaggerations, enhances, rather than diminishes, the likelihood that they are protected from libel attack by the First Amendment. Only where the speaker himself lacks this conviction, where the speaker entertains serious doubt as to the veracity of his statements, is the false statement actionable. See St. Amant, 390 U.S. at 731.

As a threshold matter, then, the Court considers plaintiff's assertions that Behar, after publishing an article in Forbes critical of the church,

> targeted the Church with a fixed view of it as a 'destructive cult.' In the next five years, through the publication of his article in the May 6, 1991 issue of Time, Behar

> refined his focus -- gathering negative information from Scientology adversaries and proposing anti-Church articles -- while never changing any view about the Church, never accepting anything a Scientologist said and uniformly ignoring anything positive he learned about the Church.

Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 2. As noted, malice in the sense of hatred or ill-will is often indicative of lack of the actual malice required under New York Times, and therefore would tend to undermine, not support, plaintiff's case. In addition, "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." St. Amant, 390 U.S. at 731. However, the combination of inadequate investigation with bias on the part of the publisher can give rise to an inference of actual malice. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 682 (1989). With a showing of an extreme departure from standard investigative techniques, bias of the reporter becomes relevant to explain this extreme departure as more than mere carelessness -- rather as purposeful avoidance of the truth. Plaintiff therefore devotes much of its opposition to the motion to attempting to demonstrate Behar's predetermined bias toward the church. However, plaintiff has failed to demonstrate the correlative circumstance of inadequate investigation to make its evidence of bias probative of actual malice, rather than probative of lack thereof. Without a showing of inadequate investigation, bias merely confirms the publisher's firmly-held belief in the allegedly defamatory statements.

With these principles in mind, the court considers each allegedly libelous statement individually to determine whether a rational finder of fact could find actual malice by clear and convincing evidence. See Tavoulareas v. Piro, 817 F.2d 762, 794 (D.C. Cir.) (en banc) ("[D]efamation plaintiffs cannot show actual malice in the abstract; they must demonstrate actual malice in conjunction with a false defamatory statement." (emphasis in original)), cert. denied, 484 U.S. 870 (1987).

A. Statements Set Forth at ¶ 40

Paragraph 40 of the complaint sets forth several statements alleged to be false and defamatory. (The text of the sentences as they appear in the article is set forth below; the portions quoted in the complaint are underlined.)

> 1. "In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> 2. "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director: 'Scientology is quite likely the most ruthless, the most classically terroristic, the most litigious and the most lucrative cult the country has ever seen. No cult extracts more money from its members.'"
>
> 3. "Those who criticize the church -- journalists, doctors, lawyers and even judges -- often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

1. Mafia-Like Intimidation

Time relied on many sources as the basis for its belief that "the church . . . survives by intimidating members and critics in a Mafia-like manner." None of these sources is so obviously incredible that a reasonable jury could infer from Time's reliance on them knowledge of falsity or subjective doubt as to veracity. *See St. Amant*, 390 U.S. at 732; *cf. id.* ("Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call."). *Compare Harte-Hanks*, 491 U.S. at 691 ("The hesitant, inaudible, and sometimes unresponsive and improbable tone of Thompson's answers to various leading questions raise obvious doubts about her veracity."). On the contrary, Behar relied on affidavits from former high-ranking Scientologists, newspaper and periodical articles, interviews and personal experience, and published court opinions, often issued after the benefit of adversarial presentation of testimony, which supported his professed belief that CSI intimidated critics and members. *See* Affidavit of Richard Behar ("Behar Aff.") ¶¶ 28-61. The Court finds that based on this evidence, no reasonable jury could find that CSI had proven by clear and convincing evidence that Time either knew or entertained serious doubts that the statement was false.

2. Most Ruthless, Classically Terroristic Cult

This statement appeared in the article in the form of a quotation from Cynthia Kisser, executive director of the Cult

Awareness Network. "Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports." Goldwater v. Ginzburg, 414 F.2d 324, 337 (2d Cir. 1969), cert. denied, 396 U.S. 1049 (1970). Based on the material supporting Behar's statement regarding Mafia-like intimidation, see Behar Aff. ¶¶ 28-61; see also id. ¶¶ 62-67, Behar's repetition of Kisser's statement was not done with knowledge that the statement was false or inherently improbable. Nor are there obvious reasons to doubt Kisser's veracity. There is no doubt that her views are deeply opposed to CSI's views, and each likely regards the other's conduct as reprehensible if not criminal, see Farny Aff. ¶ 98, but such sharp disagreement and Kisser's obvious antagonistic relationship with Scientology does not amount to an obvious reason to doubt her veracity. On the contrary, as executive director of an organization dedicated to studying so-called cults, her judgment as to CSI's ruthlessness and terroristic practices likely carried credence with Behar. See id. ¶ 62. The Court therefore finds that a reasonable jury could not find that plaintiff had demonstrated actual malice on the part of Time in publishing this statement by clear and convincing evidence.

3. Journalists, Doctors, Lawyers, and Judges Framed, Beaten Up, or Threatened with Death

In light of Behar's beliefs regarding his own experiences with Scientology, the admitted harassment of Paulette Cooper by

Scientology's Guardian's Office (which has been disbanded), and the other sources relied on by Behar, see Behar Aff. ¶¶ 85-93, the Court finds no evidence that Behar made the statement regarding journalists with actual malice. Similarly, there are not "obvious reasons to doubt" Behar's sources for his statement regarding doctors, lawyers, and judges. See St. Amant, 390 U.S. at 732. Although Behar does not have convincing evidence to link CSI with many of the strange incidents befalling these groups of people in conflict with Scientology, that fact alone does not allow a reasonable jury to conclude that Behar entertained doubts as to the veracity of his statement that these incidents are linked to CSI. Compare id. at 732 (good faith unlikely where story is fabricated by defendant, based on his imagination, or based on unverified anonymous telephone call). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

B. Statements Set Forth at ¶ 58

CSI challenges the following as false and defamatory:

> "THE LOTTICKS LOST THEIR SON, Noah, who jumped from a Manhattan hotel clutching $171, virtually the only money he had not yet turned over to Scientology. His parents blame the church and would like to sue but are frightened by the organization's reputation for ruthlessness.
>
> "His death inspired his father Edward, a physician, to start his own investigation of the church. 'We thought Scientology was something like Dale Carnegie,' Lottick says.

> 'I now believe it's a school for psychopaths. Their so-called therapies are manipulations. They take the best and brightest people and destroy them.'
>
> "It was too late. 'From Noah's friends at Dianetics' read the card that accompanied a bouquet of flowers at Lottick's funeral. Yet no Scientology staff members bothered to show up."

The primary sources relied on by Behar for these statements are the parents of Noah Lottick. The Lotticks affirmed the accuracy of each statement in the article. See Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment ("Def.'s Reply") at 12. Furthermore, the Lotticks are not obviously lacking in credibility, and the statements are not inherently improbable. Nevertheless, Behar made a thorough investigation of this aspect of his article by discussing it with various persons who knew Noah. Although Behar can be criticized for not interviewing Fred Lemons, an active Scientologist, asserted Scientology staff member, and former roommate of Noah Lottick, this omission is not such that it might raise an inference of purposeful avoidance of the truth. Cf. Harte-Hanks, 491 U.S. at 682 ("[W]hile denials coming from Connaughton's supporters might be explained as motivated by a desire to assist Connaughton, a denial coming from [the uninterviewed] Stephens would quickly put an end to the story."). Any information to be gleaned from Lemons might be expected to be similar to, though less authoritative than, information that might be obtained from the director of the Scientology Dianetics Center, whom Behar twice attempted to contact. See Behar Aff. ¶ 106. In short, besides minor omissions in investigation, from which no inference of purposeful avoidance of the truth could reasonably be drawn, (even combined with Behar's alleged bias, *see supra*) CSI has not produced evidence such that a reasonable jury could find by clear and convincing evidence that Behar published the statements with actual malice. On the contrary, as reflected in Behar's notes from one of his conversations with the Lotticks, it appears that Noah had spent the money to which he had access, that Dr. Lottick had concluded that Scientology therapies were manipulations, and that no Scientology staff members attended the funeral.[2] *See* Affidavit of Jonathan W. Lubell, Esq., at Ex. 41. Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

C. Statements Set Forth at ¶ 45

Of the statements set forth at paragraph 45 of the complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

> "Scientology denies any tie to the Fishman Scam, a claim strongly disputed by both Fishman and his longtime psychiatrist, Uwe Geertz, a prominent Florida hypnotist. Both men claim that when arrested, Fishman was ordered by the church to kill Geertz and then do an 'EOC,' or end of cycle, which is church jargon for suicide."

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[2] Although CSI asserts that Fred Lemons is a staff member, there is no evidence that Behar knew this fact. In addition, if Behar were trying to avoid this fact, he would not have contacted the Scientology center.

Behar relied on Steven Fishman, Uwe Geertz, Fishman's psychologist, Marc Nurik, Fishman's former counsel, Vicki Aznaran, a former Scientologist, and Robert Dondero, the assistant United States Attorney who prosecuted Fishman for stock fraud. Although Fishman in many respects is not highly credible, based on the corroboration of aspects of his claims by other sources, this Court finds that his claims are not obviously incredible. Cf. St. Amant, 390 U.S. at 732 (good faith unlikely where unverified reliance on obviously incredible source). Specifically, Behar relied on Geertz's evaluation of Fishman's claims, Vicki Aznaran's corroboration of Fishman and Geertz's claims regarding the length of Fishman's involvement with the church, the depth of knowledge of Scientology that Fishman demonstrated, and the corroboration of certain claims by Robert Dondero. The fact that Dondero did not believe Fishman's claims does not undermine Behar's belief because Dondero was at the time prosecuting Fishman, and that prosecution would be undermined by accepting Fishman's account of Scientology's involvement with Fishman. Cf. Harte-Hanks, 491 U.S. at 682 (denials coming from interested witnesses would not cause reporter to question veracity of allegations). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

D. Statements Set Forth in ¶ 52

Of the statements set forth at paragraph 52 of the complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

> "One source of funds for the Los Angeles-based church is the notorious, self-regulated stock exchange in Vancouver, British Columbia, often called the scam capital of the world."

The Court finds that a reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is HEREBY DENIED as to the statement set forth at paragraph 52 of the complaint, and HEREBY GRANTED as to all other statements.

SO ORDERED

New York, New York
November 14, 1995

U.S.D.J.

9117

FORTUNE

FAX COVER SHEET

1271 AVE. OF AMERICAS, NEW YORK, NEW YORK 10020
FAX NUMBERS: (212) 246-3375 (212) 765-2699

TO Dr. Uwe Geertz
FROM Richard Behar

This is Page 1 of 16 Pages

IF THERE IS A PROBLEM WITH THIS TRANSMISSION
CALL (212) 522-

Best regards!

— Richard

FORD GREENE ESQ
FAX (415) 456-5318

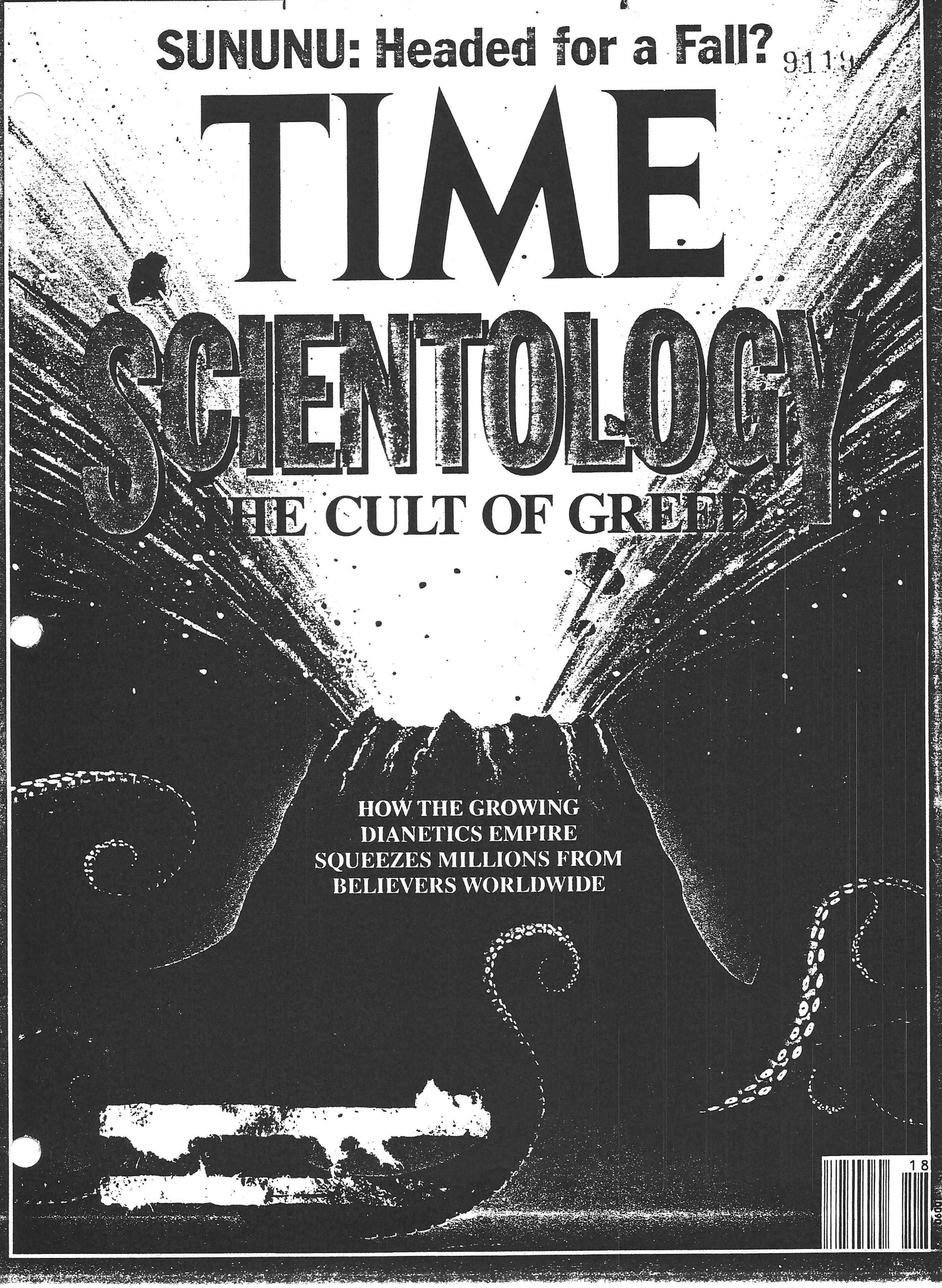
UWE GEERTZ
(305) 4345643

MAY 6, 1991 $2.50

SUNUNU: Headed for a Fall?

9119

TIME



SCIENTOLOGY

THE CULT OF GREED

HOW THE GROWING
DIANETICS EMPIRE
SQUEEZES MILLIONS FROM
BELIEVERS WORLDWIDE

18

9120

COVER STORY

The Thriving Cult of Greed and Power

Ruined lives. Lost fortunes. Federal crimes. Scientology poses as a religion but is really a ruthless global scam—and aiming for the mainstream.

By RICHARD BEHAR

By all appearances, Noah Lottick of Kingston, Pa., had been a normal, happy 24-year-old who was looking for his place in the world. On the day last June when his parents drove to New York City to claim his body, they were nearly catatonic with grief. The young Russian-studies scholar had ped from a 10th-floor window of the ord Plaza Hotel and bounced off the hood of a stretch limousine. When the police arrived, his fingers were still clutching $171 in cash, virtually the only money he hadn't yet turned over to the Church of Scientology, the self-help "philosophy" group he had discovered just seven months earlier.

His death inspired his father Edward, a physician, to start his own investigation of the church. "We thought Scientology was something like Dale Carnegie," Lottick says. "I now believe it's a school for psychopaths. Their so-called therapies are manipulations. They take the best and brightest people and destroy them." The Lotticks want to sue the church for contributing to their son's death, but the prospect has them frightened. For nearly 40 years, the big business of Scientology has shielded itself exquisitely behind the First Amendment as well as a battery of high-priced criminal lawyers and shady private detectives.

The Church of Scientology, started by science-fiction writer L. Ron Hubbard to "clear" people of unhappiness, portrays itself as a religion. In reality the church is a hugely profitable global racket that survives by intimidating members and critics Mafia-like manner. At times during the past decade, prosecutions against Scientology seemed to be curbing its menace. Eleven top Scientologists, including Hubbard's wife, were sent to prison in the early 1980s for infiltrating, burglarizing and wiretapping more than 100 private and government agencies in attempts to block their investigations. In recent years hundreds of longtime Scientology adherents—many charging that they were mentally or physically abused—have quit the church and criticized it at their own risk. Some have sued the church and won; others have settled for amounts in excess of $500,000. In various cases judges have labeled the church "schizophrenic and paranoid" and "corrupt, sinister and dangerous."

Yet the outrage and litigation have failed to squelch Scientology. The group, which boasts 700 centers in 65 countries, threatens to become more insidious and pervasive than ever. Scientology is trying to go mainstream, a strategy that has sparked a renewed law-enforcement campaign against the church. Many of the group's followers have been accused of committing financial scams, while the church is busy attracting the unwary through a wide array of front groups in such businesses as publishing, consulting, health care and even remedial education.

In Hollywood, Scientology has assembled a star-studded roster of followers by aggressively recruiting and regally pampering them at the church's "Celebrity Centers," a chain of clubhouses that offer expensive counseling and career guidance. Adherents include screen idols Tom Cruise and John Travolta, actresses Kirstie Alley, Mimi Rogers and Anne Archer, Palm Springs mayor and performer Sonny Bono, jazzman Chick Corea and even Nancy Cartwright, the voice of cartoon star Bart Simpson. Rank-and-file members, however, are dealt a less glamorous Scientology.

According to the Cult Awareness Network, whose 23 chapters monitor more than 200 "mind control" cults, no group

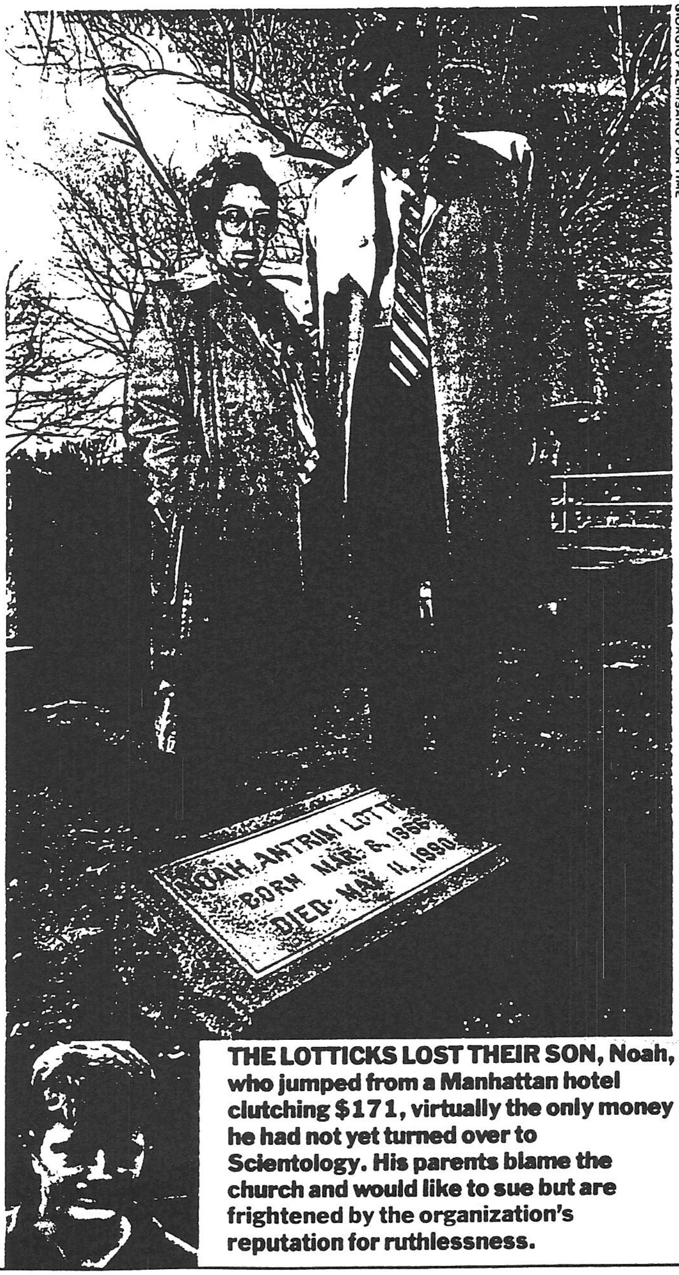
L. Ron Hubbard, 1911-86: the cult's founder and continuing inspiration prompts more telephone pleas for help than does Scientology. Says Cynthia Kisser, the network's Chicago-based executive director: "Scientology is quite likely the m[illegible]uthless, the most classically terroristic, [illegible]e most litigious and the most lucrative cult the country has ever seen. No cult extracts more money from its members." Agrees Vicki Aznaran, who was one of Scientology's six key leaders until she bolted from the church in 1987: "This is a criminal organization, day in and day out. It makes Jim and Tammy [Bakker] look like kindergarten."

To explore Scientology's reach, TIME conducted more than 150 interviews and reviewed hundreds of court records and internal Scientology documents. Church officials refused to be interviewed. The investigation paints a picture of a depraved yet thriving enterprise. Most cults fail to outlast their founder, but Scientology has prospered since Hubbard's death in 1986. In a court filing, one of the cult's many entities—the Church of Spiritual Technology—listed $503 million in income just for 1987. High-level defectors say the parent organization has squirreled away an estimated $400 million in bank accounts in Liechtenstein, Switzerland and Cyprus. Scientology probably has about 50[illegible]0 active members, far fewe[illegible]n the 8 million the group claims. But in one sense, that inflated figure rings true: millions of people have been affected in one way or another by Hubbard's bizarre creation.

Scientology is now run by David Miscavige, 31, a high school dropout and second-generation church member. Defectors describe him as cunning, ruthless and so paranoid about perceived enemies that he kept plastic wrap over his glass of water. His obsession is to attain credibility for Scientology in the 1990s. Among other tactics, the group:

- Retains public relations powerhouse Hill and Knowlton to help shed the church's fringe-group image.
- Joined such household names as Sony and Pepsi as a main sponsor of Ted Turner's Goodwill Games.
- Buys massive quantities of its own books from retail stores to propel the titles onto best-seller lists.
- [illegible]s full-page ads in such pu[illegible]cations as *Newsweek* and *Business Week* that call Scientology a "philosophy," along with a plethora of TV ads touting the group's books.
- Recruits wealthy and respectable professionals through a web of consulting groups that typically hide their ties to Scientology.

The founder of this enterprise was part storyteller, part flimflam man. Born in Nebraska in 1911, Hubbard served in the Navy during World War II and soon afterward complained to the Veterans Administration about his "suicidal inclinations" and his "seriously affected" mind. Nevertheless, Hubbard was a moderately successful writer of pulp science fiction. Years later, church brochures described him falsely as an "extensively decorated" World War II hero who was crippled and blinded in action, twice pronounced dead and miraculously cured through Scientology. Hubbard's "doctorate" from "Sequoia University" was a fake mail-order degree. In a 1984 case in which the church sued a Hubbard biographical researcher, a California judge concluded that its founder was "a pathological liar."



GIORGIO PALMISANO FOR TIME

THE LOTTICKS LOST THEIR SON, Noah, who jumped from a Manhattan hotel clutching $171, virtually the only money he had not yet turned over to Scientology. His parents blame the church and would like to sue but are frightened by the organization's reputation for ruthlessness.

Hubbard wrote one of Scientology's sacred texts, *Dianetics: The Modern Science of Mental Health*, in 1950. In it he introduced a crude psychotherapeutic technique he called "auditing." He also created a simplified lie detector (called an "E-meter") that was designed to measure electrical changes in the skin while subjects discussed intimate details of their past. Hubbard argued that unhappiness sprang from mental aberrations (or "engrams") caused by early traumas. Counseling sessions with the E-meter, he claimed, could knock out the engrams, cure blindness and even improve a person's intelligence and appearance.

Hubbard kept adding steps, each more costly, for his followers to climb. In the 1960s the guru decreed that humans are made of clusters of spirits (or "thetans") who were banished to earth some 75 million years ago by a cruel galactic ruler named Xenu. Naturally, those thetans had to be audited.

An Internal Revenue Service ruling in 1967 stripped Scientology's mother church of its tax-exempt status. A federal court ruled in 1971 that Hubbard's medical claims were bogus and that E-meter auditing could no longer be called a scientific treatment. Hubbard responded by going fully religious, seeking First Amendment protection for Scientology's strange rites. His counselors started sporting clerical collars. Chapels were built, franchises became "missions," fees became "fixed donations," and Hubbard's comic-book cosmology became "sacred scriptures."

During the early 1970s, the IRS conducted its own auditing sessions and proved that Hubbard was skimming millions of dollars from the church, laundering the money through dummy corporations in Panama and stashing it in Swiss bank accounts. Moreover, church members stole IRS documents, filed false tax returns and harassed the agency's employees. By late 1985, with high-level defectors accusing Hubbard of having stolen as much as $200 million from the church, the IRS was seeking an indictment of Hubbard for tax fraud. Scientology members "worked day and night" shredding documents the IRS sought, according to defector Aznaran, who took part in the scheme. Hubbard, who had been in hiding for five years, died before the criminal case could be prosecuted.

Today the church invents

THE BRIDGE TO ENLIGHTENMENT

"Flowing up the Bridge" from Personality Test to O.T. 8 will cost the average person an estimated $200,000 to $400,000. The steps shown are only a sample of the many courses and treatments available. Also offered: expensive books, tapes, E-meters (for auditing members), alarm clocks, polo shirts, tote bags, stained-glass windows and ceramic mugs, among many other items.

Personality Test
Cost: Free
Time required: an hour
A true-false-maybe test to determine whether you need Scientology. Everyone does.

Communications Courses
Cost: $250 each
Time required: a few weeks
Several courses entail repetitive exercises (sitting on a chair for hours without twitching, speaking to people without displaying emotion) that help pacify and indoctrinate the customer.

Regular Auditing, Grades 0-4
Cost: $500 an hour
Time required: indefinite
At graduation, you should be able to communicate effectively, make problems vanish and attain freedom from the guilt of past misdeeds and many psychosomatic ills.

New Era Dianetics
Cost: $500 an hour
Time required: indefinite
Auditing your life (and prior lives to locate evil intentions and traumatic experiences that left you with psychosomatic ills. At graduation, you have attained the state of "clear."

9122

THE CURRENT LEADER

Obsessed with security, church boss David Miscavige reportedly likes to shoot photos of perceived enemies with a .45 automatic.

costly new services with all the zeal of its founder. Scientology doctrine warns that even adherents who are "cleared" of engrams face grave spiritual dangers unless they are pushed to higher and more expensive levels. According to the church's latest price list, recruits—"raw meat," as Hubbard called them—take auditing sessions that cost as much as $1,000 an hour, or $12,500 for a 12½-hour "intensive."

Psychiatrists say these sessions can produce a drugged-like, mind-controlled euphoria that keeps customers coming back for more. To pay their fees, newcomers can earn commissions by recruiting new members, become auditors themselves (Miscavige did so at age 12), or join the church staff and receive free counseling in exchange for what their written contracts describe as a "billion years" of labor. "Make sure that lots of bodies move through the shop," implored Hubbard in one of his bulletins to officials. "Make money. Make more money. Make others produce so as to make money . . . However you get them in or why, just do it."

Harriet Baker learned the hard way about Scientology's business of selling religion. When Baker, 73, lost her husband to cancer, a Scientologist turned up at her Los Angeles home peddling a $1,300 auditing package to cure her grief. Some $15,000 later, the Scientologists discovered that her house was debt free. They arranged a $45,000 mortgage, which they pressured her to tap for more auditing until Baker's children helped their mother snap out of her daze. Last June, Baker demanded a $27,000 refund for unused services, prompting two cult members to show up at her door unannounced with an E-meter to interrogate her. Baker never got the money and, financially strapped, was forced to sell her house in September.

Before Noah Lottick killed himself, he had paid more than $5,000 for church counseling. His behavior had also become strange. He once remarked to his parents that his Scientology mentors could actually read minds. When his father suffered a major heart attack, Noah insisted that it was purely psychosomatic. Five days before he jumped, Noah burst into his parents' home and demanded to know why they were spreading "false rumors" about him—a delusion that finally prompted his father to call a psychiatrist.

It was too late. "From Noah's friends at Dianetics" read the card that accompanied a bouquet of flowers at Lottick's funeral. Yet no Scientology staff members bothered to show up. A week earlier, local church officials had given Lottick's parents a red-carpet tour of their center. A cult leader told Noah's parents that their son had been at the church just hours before he disappeared—but the church denied this story as soon as the body was identified. True to form, the cult even haggled with the Lotticks over $3,000 their son had paid for services he never used, insisting that Noah had intended it as a "donation."

The church has invented hundreds of goods and services for which members are urged to give "donations." Are you having trouble "moving swiftly up the Bridge"—that is, advancing up the stepladder of enlightenment? Then you can have your case reviewed for a mere $1,250 "donation." Want to know "why a thetan hangs on to the physical universe?" Try 52 of Hubbard's tape-recorded speeches from 1952, titled "Ron's Philadelphia Doctorate Course Lectures," for $2,525. Next: nine other series of the same sort. For the collector, gold-and-leather-bound editions of 22 of Hubbard's books (and bookends) on subjects ranging from Scientology ethics to radiation can be had for just $1,900.

To gain influence and lure richer, more sophisticated followers, Scientology has lately resorted to a wide array of front groups and financial scams. Among them:

CONSULTING. Sterling Management Systems, formed in 1983, has been ranked in recent years by *Inc.* magazine as one of America's fastest-growing private companies (estimated 1988 revenues: $20 million). Sterling regularly mails a free newsletter to more than 300,000 health-care professionals, mostly dentists, promising to increase their incomes dramatically. The firm offers seminars and courses that typically cost $10,000. But Sterling's true aim is to hook customers for Scientology. "The church has a rotten product, so they package it as something else," says Peter Georgiades, a Pittsburgh attorney who represents Sterling victims. "It's a kind of bait and switch." Sterling's founder, dentist Gregory Hughes, is now under investigation by California's Board of Dental Examiners for incompetence. Nine lawsuits are pending against him for malpractice (seven

ear Certainty Rundown

ost: **$2,800**

ime requir[illegible] hours

This course ascertains whether you are truly clear. If you are, you get the Sunshine Rundown, in which you are walked around town to reacquaint yourself with the world.

O.T.* 1-2

Cost: **$7,978**

Time required: up to 100 hours

After learning how your perceptions of the world and of people have changed since going clear, you are taught about the ideas that were implanted in man more than 75 million years ago.

*O.T. means Operating Thetan, a being at an advanced stage of clear.

O.T. 3-4

Cost: **$17,010**

Time required: several months

Scientology's "sacred scriptures": the story about the galactic ruler Xenu, the volcanic explosions on earth and the implantations of the spirits (body thetans). This level also helps free you from the effects of drugs taken in past lives.

O.T. 5-7

Cost: **$25,600**

Time required: several months

Finds and releases body thetans (B.T.s), or negative spiritual beings, that have been asleep or unconscious inside you for millions of years. In his later days, Hubbard could be heard screaming at his B.T.s.

O.T. 8

Cost: **$11,140, plus accommodations**

Time required: a few weeks

The ultimate answer to everything. There are no known defectors from O.T. 8, which is offered only aboard Scientology's yacht, but the "answer" is rumored to be that Hubbard is God. O.T. 9 texts are said to be written but not released.

WHAT THEY THINK

"It [Scientology] just contains the secrets of the universe. That may be hard for people to handle sometimes, hearing that."
–John Travolta

"It's not hocus-pocus ... If you can erase engrams, then you can get better."
–Kirstie Alley

L. RON HUBBARD SPEAKS

"In all the broad universe, there is no other hope for man than ourselves. This is a tremendous responsibility. I have borne it too long alone. You share it with me now."

"The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway ... will generally be sufficient to cause his professional decrease. If possible, of course, ruin him utterly."

"All men are your slaves."

"Don't ever tamely submit to an investigation of us. Make it rough, rough on attackers all the way."

others have been settled), mostly for orhodontic work on children.

Many dentists who have unwittingly been d[illegible] into the cult are filing or hreatening lawsuits as well. Dentist Robert Geary of Medina, Ohio, who entered a Sterling seminar in 1988, endured "the most extreme high-pressure sales tactics I have ever faced." Sterling officials told Geary, 45, that their firm was not linked to Scientology, he says. But Geary claims hey eventually convinced him that he and his wife Dorothy had personal problems hat required auditing. Over five months, he Gearys say, they spent $130,000 for services, plus $50,000 for "gold-embossed, investment-grade" books signed by Hubbard. Geary contends that Scientologists not only called his bank to increase his credit-card limit but also forged his signature on a $20,000 loan application. "It was insane," he recalls. "I couldn't even get an accounting from them of what I was paying for." At one point, the Gearys claim, Scientologists held Dorothy hostage for two weeks in a mountain cabin, after which she was hospitalized for a nervous breakdown.

Last October, Sterling broke some bad news to another dentist, Glover Rowe of Gadsden, Ala., and his wife Dee. Tests showed that unless they signed up for auditing, Glover's practice would fail, and Dee would someday abuse their child. The next month the Rowes flew to Glendale, Calif., where they shuttled daily from a local hotel to a Dianetics center. "We thought they were brilliant people because they seemed to know so much about us," recalls Dee. "Then we realized our hotel room must have been bugged." After bolting from the center, $23,000 poorer, the Rowes say, they were chased repeatedly by Scientologists on foot and in cars. Dentists aren't the only ones at risk. Scientology also makes pitches to chiropractors, podiatrists and veterinarians.

PUBLIC INFLUENCE. One front, the Way to Happiness Foundation, has distributed to children in thousands of the nation's public schools more than 3.5 million copies of a booklet Hubbard wrote on morality. The church calls the scheme "the largest dissemination project in Scientology history." Applied Scholastics is the name of still another front, which is attempting to install a Hubbard tutorial program in public schools, primarily those populated by minorities. The group also plans a 1,000-acre campus, where it will train educators to teach various Hubbard methods. The disingenuously named Citizens Commission on Human Rights is a Scientology group at war with psychiatry, its primary competitor. The commission typically issues reports aimed at discrediting particular psychiatrists and the field in general. The CCHR is also behind an all-out war against Eli Lilly, the maker of Prozac, the nation's top-selling antidepression drug. Despite scant evidence, the group's members—who call themselves "psychbusters"—claim that Prozac drives people to murder or suicide. Through mass mailings, appearances on talk shows and heavy lobbying, CCHR has hurt drug sales and helped spark dozens of lawsuits against Lilly.

Another Scientology-linked group, the Concerned

MARK RICHARDS FOR TIME

HARRIET BAKER, 73, LOST HER HOUSE after Scientologists learned it was debt free and arranged a $45,000 mortgage, which they pressured her to tap to pay for auditing. They had approached her after her husband died to help "cure" her grief. When she couldn't repay the mortgage, she had to sell.

Businessmen's Association of America, holds antidrug contests and awards $5,000 grants to schools as a way to recruit students and curry favor with education officials. West Virginia Senator John D. Rockefeller IV unwittingly commended the CBAA in 1987 on the Senate floor. Last August author Alex Haley was the keynote speaker at its annual awards banquet in Los Angeles. Says Haley: "I didn't know much about that group going in. I'm a Methodist." Ignorance about Scientology can be embarrassing: two months ago, Illinois Governor Jim Edgar, noting that Scientology's founder "has solved the aberrations of the human mind," proclaimed March 13 "L. Ron Hubbard Day." He rescinded the proclamation in late March, once he learned who Hubbard really was.

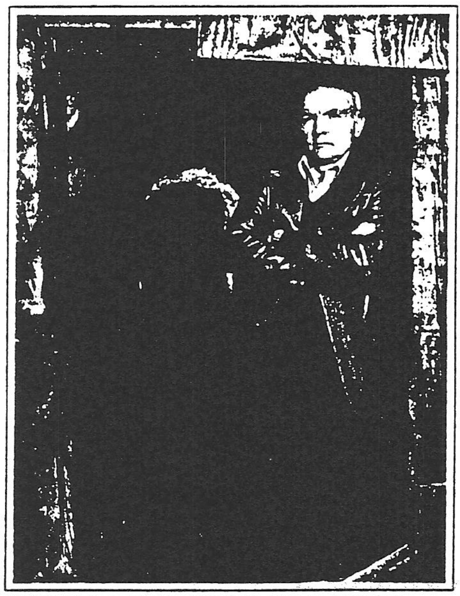
HEALTH CARE. HealthMed, a chain of clinics run by Scientologists, promotes a grueling and excessive system of saunas, exercise and vitamins designed by Hubbard to purify the body. Experts denounce the regime as quackery and potentially harmful, yet HealthMed solicits unions and public agencies for contracts. The chain is plugged heavily in a new book, *Diet for a Poisoned Planet*, by journalist David Steinman, who concludes that scores of common foods (among them: peanuts, bluefish, peaches and cottage cheese) are dangerous.

Mining Money in Vancouver

One source of funds for the Los Angeles–based church is the notorious, self-regulated stock exchange in Vancouver, British Columbia, often called the scam capital of the world. The exchange's 2,300 penny-stock listings account for $4 billion in annual trading. Local journalists and insiders claim the vast majority range from total washouts to outright frauds.

Two Scientologists who operate there are Kenneth Gerbino and Michael Baybak, 20-year church veterans from Beverly Hills who are major donors to the cult. Gerbino, 45, is a money manager, marketmaker and publisher of a national financial newsletter. He has boasted in Scientology journals that he owes all his stock-picking success to L. Ron Hubbard. That's not saying much: Gerbino's newsletter picks since 1985 have cumulatively returned 24%, while the Dow Jones industrial average has more than doubled. Nevertheless Gerbino's short-term gains can be stupendous. A survey last October found Gerbino to be the only manager who made money in the third quarter of 1990, thanks to gold and other resource stocks. For the first quarter of 1991, Gerbino was dead last. Baybak, 49, who runs a public relations company staffed with Scientologists, apparently has no ethics problem with engineering a hostile takeover of a firm he is hired to promote.

Neither man agreed to be interviewed for this story, yet both threatened legal action through attorneys. "What these guys do is take over companies, hype the stock, sell their shares, and then there's nothing left," says John Campbell, a former securities lawyer who was a director of mining company Athena Gold until Baybak and Gerbino took it over.


P.F. BENTLEY FOR TIME

ATHENA GOLD'S WILLIAM JORDAN
Cult members got cheap stock, then ran him out of the company

The pattern has become familiar. The pair promoted a mining venture called Skylark Resources, whose stock traded at nearly $4 a share in 1987. The outfit soon crashed, and the stock is around 2¢. NETI Technologies, a software company, was trumpeted in the press as "the next Xerox" and in 1984 rose to a market value of $120 million with Baybak's help. The company, which later collapsed, was delisted two months ago by the Vancouver exchange.

Baybak appeared in 1989 at the helm of Wall Street Ventures, a start-up that announced it owned 35 tons of rare Middle Eastern postage stamps—worth $100 million—and was buying the world's largest collection of southern Arabian stamps (worth $350 million). Steven C. Rockefeller Jr. of the oil family and former hockey star Denis Potvin joined the company in top posts, but both say they quit when they realized the stamps were virtually worthless. "The stamps were created by sand-dune nations to exploit collectors," says Michael Laurence, editor of *Linn's Stamp News*, America's largest stamp journal. After the stock topped $6, it began a steady descent, with Baybak unloading his shares along the way. Today it trades at 18¢.

Athena Gold, the current object of Baybak's and Gerbino's attentions, was founded by entrepreneur William Jordan. He turned to an established Vancouver broker in 1987 to help finance the company, a 4,500-acre mining property near Reno. The broker promised to raise more than $3 million and soon brought Baybak and Gerbino into the deal. Jordan never got most of the money, but the cult members ended up with a good deal of cheap stock and options. Next they elected directors who were friendly to them and set in motion a series of complex maneuvers to block Jordan from voting stock he controlled and to run him out of the company. "I've been an honest policeman all my life and I've seen the worst kinds of crimes, and this ranks high," says former Athena shareholder Thomas Clark, a 20-year veteran of Reno's police force who has teamed up with Jordan to try to get the gold mine back. "They stole this man's property."

With Baybak as chairman, the two Scientologists and their staffs are promoting Athena, not always accurately. A letter to shareholders with the 1990 annual report claims Placer Dome, one of America's largest gold-mining firms, has committed at least $25.5 million to develop the mine. That's news to Placer Dome. "There is no pre-commitment," says Placer executive Cole McFarland. "We're not going to spend that money unless survey results justify the expenditure."

Baybak's firm represented Western Resource Technologies, a Houston oil-and-gas company, but got the boot in October. Laughs Steven McGuire, president of Western Resource: "His is a p.r. firm in need of a p.r. firm." But McGuire cannot laugh too freely. Baybak and other Scientologists, including the estate of L. Ron Hubbard, still control huge blocks of his company's stock.

—*By Richard Behar*

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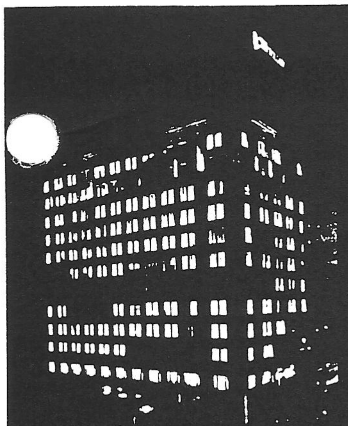
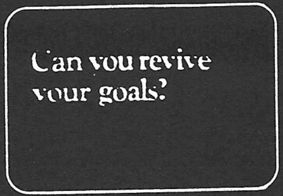
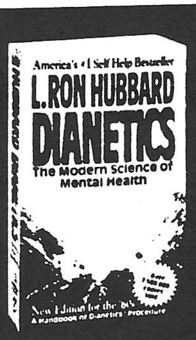


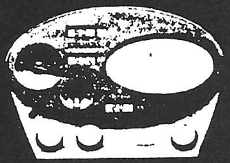
Church of Scientology International headquarters, Los Angeles



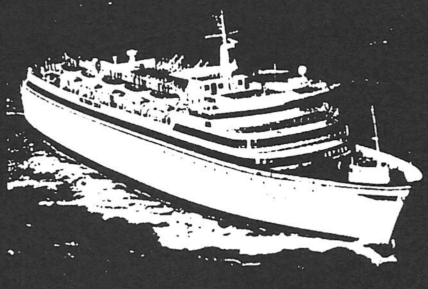

America's #1 Self Help Bestseller
L. RON HUBBARD
DIANETICS
The Modern Science of Mental Health
New Edition for the 90s

One of the heaviest TV advertising campaigns in the publishing industry pushes the 40-year-old *Dianetics*, the cult's basic sacred text

Celebrity Center International in Hollywood is one of several church clubhouses that cater to stars



E-meter: $4,375



The *Freewinds:* high-level enlightenment

Scientology's college in Sussex, England

verts and credibility, is coupled with a radio and TV advertising campaign virtually unparalleled in the book industry.

Scientology devotes vast resources to squelching its critics. Since 1986 Hubbard his church have been the subject of four unfriendly books, all released by small yet courageous publishers. In each case, the writers have been badgered and heavily sued. One of Hubbard's policies was that all perceived enemies are "fair game" and subject to being "tricked, sued or lied to or destroyed." Those who criticize the church—journalists, doctors, lawyers and even judges—often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death. Psychologist Margaret Singer, 69, an outspoken Scientology critic and professor at the University of California, Berkeley, now travels regularly under an assumed name to avoid harassment.

After the Los Angeles *Times* published a negative series on the church last summer, Scientologists spent an estimated $1 million to plaster the reporters' names on hundreds of billboards and bus placards across the city. Above their names were quotations taken out of context to portray the church in a positive light.

The church's most fearsome advocates are its lawyers. Hubbard warned his followers in writing to "beware of attorneys who tell you not to sue . . . the purpose of the suit is to harass and discourage rather than win." Result: Scientology has brought ndreds of suits against its perceived enemies and today pays an estimated $20 million annually to more than 100 lawyers.

One legal goal of Scientology is to bankrupt the opposition or bury it under paper. The church has 71 active lawsuits against the IRS alone. One of them, *Miscavige vs. IRS*, has required the U.S. to produce an index of 52,000 pages of documents. Boston attorney Michael Flynn, who helped Scientology victims from 1979 to 1987, personally endured 14 frivolous lawsuits, all of them dismissed. Another lawyer, Joseph Yanny, believes the church "has so subverted justice and the judicial system that it should be barred from seeking equity in any court." He should know: Yanny represented the cult until 1987, when, he says, he was asked to help church officials steal medical records to blackmail an opposing attorney (who was allegedly beaten up instead). Since Yanny quit representing the church, he has been the target of death threats, burglaries, lawsuits and other harassment.

Scientology's critics contend that the U.S. needs to crack down on the church in a major, organized way. "I want to know, Where is our government?" demands Toby Plevin, a Los Angeles attorney who handles victims. "It shouldn't be left to private litigators, because God knows most of us are afraid to get involved." But law-enforcement agents are also wary. "Every investigator is very cautious, walking on eggshells when it comes to the church," says a Florida police detective who has tracked the cult since 1988. "It will take a federal effort with lots of money and manpower."

So far the agency giving Scientology the most grief is the IRS, whose officials have implied that Hubbard's successors may be looting the church's coffers. Since 1988, when the U.S. Supreme Court upheld the revocation of the cult's tax-exempt status, a massive IRS probe of church centers across the country has been under way. An IRS agent, Marcus Owens, has estimated that thousands of IRS employees have been involved. Another agent, in an internal IRS memorandum, spoke hopefully of the "ultimate disintegration" of the church. A small but helpful beacon shone last June when a federal appeals court ruled that two cassette tapes featuring conversations between church officials and their lawyers are evidence of a plan to commit "future frauds" against the IRS.

The IRS and FBI have been debriefing Scientology defectors for the past three years, in part to gain evidence for a major racketeering case that appears to have stalled last summer. Federal agents complain that the Justice Department is unwilling to spend the money needed to endure a drawn-out war with Scientology or to fend off the cult's notorious jihads against individual agents. "In my opinion the church has one of the most effective intelligence operations in the U.S., rivaling even that of the FBI," says Ted Gunderson, a former head of the FBI's Los Angeles office.

Foreign governments have been moving even more vigorously against the organization. In Canada the church and nine of its members will be tried in June on charges of stealing government documents (many of them retrieved in an enormous police raid of the church's Toronto headquarters). Scientology proposed to give $1 million to the needy if the case was dropped, but Canada spurned the offer. Since 1986 authorities in France, Spain and Italy have raided more than 50 Scientology centers. Pending charges against more than 100 of its overseas church members include fraud, extortion, capital flight, coerc[illegible] illegally practicing medicine and takin[illegible]antage of mentally incapacitated people. In Germany last month, leading politicians accused the cult of trying to infiltrate a major party as well as launching an immense recruitment drive in the east.

Sometimes even the church's biggest zealots can use a little protection. Screen star Travolta, 37, has long served as an unofficial Scientology spokesman, even though he told a magazine in 1983 that he was opposed to the church's management. High-level defectors claim that Travolta has long feared that if he defected, details of his sexual life would be made public. "He felt pretty intimidated about this getting out and told me so," recalls William Franks, the church's former chairman of the board. "There were no outright threats made, but it was implicit. If you leave, they immediately start digging up everything." Franks was driven out in 1981 after attempting to reform the church.

The church's former head of security, Richard Aznaran, recalls Scientology ringleader Miscavige repeatedly joking to staffers about Travolta's allegedly promiscuous homosexual behavior. At this point any threat to expose Travolta seems superfluous: last May[illegible]ale porn star collected $100,000 from [illegible]abloid for an account of his alleged two-year liaison with the celebrity. Travolta refuses to comment, and in December his lawyer dismissed questions about the subject as "bizarre." Two weeks later, Travolta announced that he was getting married to actress Kelly Preston, a fellow Scientologist.

Shortly after Hubbard's death the church retained Trout & Ries, a respected, Connecticut-based firm of marketing consultants, to help boost its public image. "We were brutally honest," says Jack Trout. "We advised them to clean up their act, stop with the controversy and even to stop being a church. They didn't want to hear that." Instead, Scientology hired one of the country's largest p.r. outfits, Hill and Knowlton, whose executives refuse to discuss the lucrative relationship. "Hill and Knowlton must feel that these guys are not totally off the wall," says Trout. "Unless it's just for the money."

One of Scientology's main strategies is to keep advancing the tired argument that the church is being "persecuted" by anti-religionists. It is supported in that position by the American Civil Liberties Union and the National Council of Churches. But in the end, money is what Scientology is all abo[illegible]As long as the organization's opponents and victims are successfully squelched, Scientology's managers and lawyers will keep pocketing millions of dollars by helping it achieve its ends. ■

The Scientologists and Me

Strange things seem to happen to people who write about Scientology. Journalist Paulette Cooper wrote a critical book on the cult in 1971. This led to a Scientology plot (called Operation Freak-Out) whose goal, according to church documents, was "to get P.C. incarcerated in a mental institution or jail." It almost worked: by impersonating Cooper, Scientologists got her indicted in 1973 for threatening to bomb the church. Cooper, who also endured 19 lawsuits by the church, was finally exonerated in 1977 after FBI raids on the church offices in Los Angeles and Washington uncovered documents from the bomb scheme. No Scientologists were ever tried in the matter.

For the TIME story, at least 10 attorneys and six private detectives were unleashed by Scientology and its followers in an effort to threaten, harass and discredit me. Last Oct. 12, not long after I began this assignment, I planned to lunch with Eugene Ingram, the church's leading private eye and a former cop. Ingram, who was tossed off the Los Angeles police force in 1981 for alleged ties to prostitutes and drug dealers, had told me that he might be able to arrange a meeting with church boss David Miscavige. Just hours before the lunch, the church's "national trial counsel," Earle Cooley, called to inform me that I would be eating alone.

Church attorney Cooley

AP

Alone, perhaps, but not forgotten. By day's end, I later learned, a copy of my personal credit report—with detailed information about my bank accounts, home mortgage, credit-card payments, home address and Social Security number—had been illegally retrieved from a national credit bureau called Trans Union. The sham company that received it, "Educational Funding Services" of Los Angeles, gave as its address a mail drop a few blocks from Scientology's headquarters.

The owner of the mail drop is a private eye named Fred Wolfson, who admits that an Ingram associate retained him to retrieve credit reports on several individuals. Wolfson says he was told that Scientology's attorneys "had judgments against these people and were trying to collect on them." He says now, "These are vicious people. These are vipers." Ingram, through a lawyer, denies any involvement in the scam.

During the past five months, private investigators have been contacting acquaintances of mine, ranging from neighbors to a former colleague, to inquire about subjects such as my health (like my credit rating, it's excellent) and whether I've ever had trouble with the IRS (unlike Scientology, I haven't). One neighbor was greeted at dawn outside my Manhattan apartment building by two men who wanted to know whether I lived there. I finally called Cooley to demand that Scientology stop the nonsense. He promised to look into it.

After that, however, an attorney subpoenaed me, while another falsely suggested that I might own shares in a company I was reporting about that had been taken over by Scientologists (he also threatened to contact the Securities and Exchange Commission). A close friend in Los Angeles received a disturbing telephone call from a Scientology staff member seeking data about me—an indication that the cult may have illegally obtained my personal phone records. Two detectives contacted me, posing as a friend and a relative of a so-called cult victim, to elicit negative statements from me about Scientology. Some of my conversations with them were taped, transcribed and presented by the church in affidavits to TIME's lawyers as "proof" of my bias against Scientology.

Among the comments I made to one of the detectives, who represented himself as "Harry Baxter," a friend of the victim's family, was that "the church trains people to lie." Baxter and his colleagues are hardly in a position to dispute that observation. His real name is Barry Silvers, and he is a former investigator for the Justice Department's Organized Crime Strike Force.

—By Richard Behar

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OCT 10 1995
KEENAN G. CASA , Cle
U.S. BANKRUPTCY COURT-SANTA RO

10-11-95

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re GERALD ARMSTRONG, Debtor.	No. 95-10911
CHURCH OF SCIENTOLOGY INTERNATIONAL, Plaintiff, v. GERALD ARMSTRONG, Defendant.	A.P. No. 95-1164

ORDER REGARDING TRIAL TESTIMONY

It appearing necessary to an effective trial of this adversary proceeding, it is

ORDERED that all direct testimony at the trial shall be in the form of declarations. The declarations shall be filed with the court and a copy mailed to the other side at least seven days before trial. Each declarant shall be present in court at trial to be cross-examined. No exhibits or other papers of any kind may be attached to the declarations; all exhibits will be made part of the record only by motion at trial in the usual manner.

Dated: October 8, 1995

Alan Jaroslovsky
U.S. Bankruptcy Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: October 10, 1995

Deputy Clerk

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